LAW AND LAWYERS;

OR,

Sketches and Illustrations

OF

LEGAL HISTORY AND BIOGRAPHY.

IN TWO VOLUMES.

VOL. I.

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"Albeit beginnings of this studie seem difficult, yet, when the professor of the law can dive into the depth, it is delightful easie and without any heavy burthen, so long as he keep himself in his own proper element."

Co. Litt.

PREFACE.

Sir William Jones has observed, that "the only road to the highest stations in this country, is that of the law:"* and, probably, it is to a general conviction of this kind that we owe the multitude of aspirants for its honors and dignities. There is no profession in the country, in whose character and prospects so much interest is felt, and which exercises so important an influence upon our social and political relations. Those who are the most prominent in its ranks are well known to the public, and there are few persons to be met with who are not, more or less, connected with some one belonging to it.

At the bar and on the bench, have been found those, who, in the worst and darkest times, have nobly vindicated the supremacy of the laws, and, despite the ambition of despotic sovereigns and the fury of licentious demagogues, have defended the rights of the people, and the prerogatives of the crown.

In allusion to the repeated attempts of James I to overawe his parliaments, Mr. Godwin observes, that "it is impossible to review these proceedings without feeling that the liberties of England are to no man so deeply indebted, as to Sir Edward Coke." And, in how many instances

* Sir E. Coke has given a list of "near two hundred great and noble families, which had even in his time risen by the law."

have those liberties been preserved by the intrepidity and independence of the judges of England! How many evils have we been spared—seeing that we, like every other government resting upon public opinion as its basis, have ever been oscillating between extremes—by the purity and impartiality with which justice has been administered amongst us. "In my mind," says the greatest orator of our age, "he was guilty of no error—he was chargeable with no exaggeration—he was betrayed by his fancy into no metaphor, who once said, that all we see about us, King, Lords, and Commons, the whole machinery of the state, all the apparatus of the system, and its varied workings, end in simply bringing twelve good men into a box." Bacon has expressed his conviction of the vast importance of our judicial system, in terms not less pointed and forcible. "When any of the four pillars of government," says he, "are mainly shaken or weakened, men had need to pray for fair weather."

"Dr. Johnson," says Boswell, "thought favorably of the law; and said that the sages thereof, for a long series backwards, had been friends to religion." This contradicts the old monkish maxim—we presume the language to be canine-latinity—

"Bonus Jurista, malus Christa."

"I must needs say," observes Richard Baxter, "that the improvement of reason; the diverting men from sensuality and idleness; the maintaining of propriety and justice; and, consequently, the peace and welfare of the kingdom, is very much to be ascribed to the Judges and Lawyers." "Lord Burghlie," says his biographer, "commended the studie of the common law above all others; and said, that if he were to begin his life again, he would follow that studie."

Bishop Warburton has said of lawyers, that "their manners have in every age been such as were the first improved

and the last corrupted." His friend Dr. Hurd has said that "though in the great bodies of churchmen and lawyers, some will always be found to dishonor themselves, there have never been wanting others to do justice to the public, and to assert, maintain, and preserve the dignity of their respective professions."

In the following work, we have attempted to trace the fortunes of some of our more eminent lawyers—to show the means by which they elevated themselves—and the struggles they underwent in endeavoring that elevation.

Every work in the progress of these volumes has been fully searched, which it was thought would contain information respecting the profession, and those who have been prominent as its leaders. In the pages of the Law Magazine—a publication of considerable interest and importance—much valuable matter has been found, of which the author has made a liberal use. As he is most anxious that the pretensions of this work should not be mistaken, he has also to express his acknowledgments to the compilers of an amusing little work, entitled "Westminster Hall," (understood to have been the production of the late Mr Henry Roscoe, and one of his brothers,) which is composed for the most part, of extracts, and which, had it come to the knowledge of the author earlier, would have spared him much labor—often wearisome, and still oftener profitless.

He is also greatly indebted to Hacket's Life of Dean Williams, and North's Life of Lord Guildford—works, which will fairly rank among the most inimitable biographies of our language.

For imperfections—for sins of omission and commission—the author has no excuse to offer but this—that the work was composed under very considerable disadvantages. The latter portion of it was written, at intervals, in the midst of occupations of a more serious character.

In dismissing these volumes, the author begs to express his hope that they may be found of some utility. The examples which they contain of men, who, by the mere force of their own talents and persevering energy have conquered opposing circumstances, and unfriendly fortune, and from the humblest have risen to the highest stations, must surely afford encouragement to those whose position is as unfavorable, and whose prospects are as gloomy. It is a false and debasing philosophy which has proclaimed man to be the creature of circumstances. With much greater truth may it be said of him, that so far from being their creature, he is their creator.

"Mihi res, non me rebus, subjungere conor,"

was the proud resolve of the philosophic satirist, and it should be that of all who wish to deserve, as well as to obtain, advancement. It will surely be found, too, that not only have intellectual powers and extensive information formed elements in the attainment of success, but that personal character, high honor, and unswerving integrity, have equally contributed to that end, and it has been those who have been thus distinguished that have received the *most abundant* reward.

Middle Temple,
Hilary Term, 1840.

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LAW AND LAWYERS.



CHAPTER I.

LAW EDUCATION.

Great Lawyers not mere Lawyers—Law and the Classics—Lord Hardwicke—Mr. Baron Alderson—Sir M. Hale, and Cornelius Nepos—Lord Kenyon—Importance of general knowledge to Lawyers, Quarantine, Russia Duck and an imprudent "Jehu"—Study of Law—Lord Somers and Mr. Canning—Lawyers' ignorance of Law—Industry—Present state of the Law—Hours of Study—Sir M. Hall, and Lord Eldon—Pupilage and Law Lectures—Solicitors' offices—University Men at the Bar—Law an "Ars bablativa"—Law amusements.

"Lady Common Law must lie alone," says the proverb; but yet, which of our great lawyers has been a *mere lawyer?* Coke, the father of English jurisprudence, boasted that in his Institutes might be found *three hundred quotations from Virgil!* "It standeth well with the gravity of our lawyers," he observes, "to cite verses." His quotations seldom evince much taste, but still conclusively prove that the great lawyer was something besides a lawyer. Judge Whitelock, the father of the celebrated Bulstrode Whitelock, was not only profoundly versed in law, but was also an accomplished classical scholar.

Once, while presiding at the assizes at Oxford, observing some foreigners of distinction enter the court, he repeated the heads of his charge to the grand jury in Latin, "and thereby," says his son, "informed the strangers and the scholars of the ability of our judges, and the course of our proceedings in matters of law and justice."

Dr. Cowell or Cowheel, as Coke called him, an eminent civilian and common lawyer, considered that the range of a lawyer's study should be co-extensive with nature herself. "A lawyer," he says, "professeth true philosophy; and therefore should not be ignorant (*if it were possible*) of either beasts, fowls, creeping things, nor of the trees, from the cedar of Lebanon to the hyssop that springeth out of the wall." "The sparks of all the sciences in the world," says Sir Henry Finch, "are raked up in the ashes of the law." Sir Matthew Hale was a good linguist and able theologian. Lord Keeper Guilford when studying the law, "continued to pursue his inquiries into all ingenious arts, history, humanity, and language; whereby he became not only a good lawyer, but a good historian, politician, mathematician, natural philosopher, and I must add musician in perfection."* The varied accomplishments of Sir William Jones are well known. Of the eminent men now amongst us, how many might we name who have acquired reputation elsewhere than in Westminster Hall. Lord Denman's beautiful translation of the song of Harmodius in the Anthology, and Mr. Justice Coleridge's admirable paraphrases of many portions of the Greek tragedians, are well known—Lord Abinger does not

* "Roger North's Life of Lord Keeper Guilford."

the less efficiently perform his duties, because last year he made his literary *debût* in the "Book of Beauty"—we doubt if the author of "Ion," has found the composition of that charming play render him less capable as an advocate—nor do we suppose that Mr. Justice Williams's well-known command of Greek versification, has in any way disqualified him for his post. Dr. Philip Williams, the present Vinerian professor, has published a continuation of Dryden's Hind and Panther; while his brother professor at Cambridge, has brought philosophy to illustrate law, and given to the profession a work of greater value than any *mere lawyer* however deeply read, could ever produce. If Fearne or Jones had been mere lawyers, would the Essays on Contingent Remainders and on Bailments have been the master-pieces that they are?*

Those who desire that the lawyer should fulfil the description of Cicero, "Leguleius quidam cautus, et acutus præco actionum, cantor formularum, auceps syllabarum," desire to see one who in all probability, would be but a poor lawyer. That there have been men who have devoted themselves to law, and without knowledge of any other kind, have acquired eminence as lawyers, is undoubtedly true. So did Ferguson dispense with all mathematical education, and by the native powers of his own mind was enabled, without books or instruction, to acquire eminence as a philosopher; so have the master-spirits of our species overcome the difficulties of their position, and con-

* Lord Chancellor Cowper used to declare, that he owed all the powers of reasoning that he possessed, to the study of Chillingworth.

quered the obstacles that lay in their way; but this surely affords no ground for contending that all who desire to excel, should reject the means of improvement which were denied to, not refused by, them. "No perfect discovery can be made," says Lord Bacon, "upon a flat or a level; neither is it possible to discover the more remote and deeper parts of any science, if you stand but upon the level of the same science and ascend not to a higher science." "'Till men," observes Lord Bolingbroke, "find leisure and encouragement to prepare themselves for the exercise of this profession, by climbing up to the *vantage ground*, as my Lord Bacon calls it of science, instead of grovelling all their lives below, in mean, but gainful, application to all the little arts of chicane, the profession of the law will scarcely deserve to be ranked among the learned professions." Some one complained to D'Augesseau, the great French chancellor, "that he spent too much time in the society of men of letters." "A preliminary inquiry," returned the chancellor, "is, whether I spend too much time in relaxation? With this, no one, I think, will charge me. Then how can I relax myself better, than in the society of men whose learning and taste all the nation admires. They both instruct and delight me."

It is a practice too common with controversialists, to argue against things in extremes. There is no necessity because a lawyer devotes a certain portion of his time to the improvement of his mind and the cultivation of his taste by the study of literature, that he should therefore neglect the calls of his profession. "Moderation," says Fuller, "is the silken string running through the pearl chain of all virtues."

As to the sort of education best calculated for the bar student, we would, in the first place, observe, that let libellers say what they will, the bar is composed, for the most part, of gentlemen. That sort and extent of information usually found amongst gentlemen, will, consequently, be expected from any one who enters the profession. An acquaintance with the classics, more or less intimate, usually forms a part of the education of every English gentleman; for this reason, a classical education is desirable to all who intend to become members of the bar. There have been men, indeed, who have risen to the very highest honors of the profession without the advantages of a classical education; but it would be as prudent to imitate their conduct as it would be to obtain for a son a lieutenancy in the French artillery, under the expectation, that he would, therefore, become emperor of the French. Lord Erskine was a soldier before he was chancellor; but he became chancellor in spite of his having been a soldier, for certainly the parade of the Horse Guards is not the nearest cut to the Woolsack. Lord Hardwicke never received a classical education,* nor did Lord Gifford, nor did Sir Edward Sugden; but these form the exceptions—they do not make the rule. Lord Hardwicke, who, according to Dr. King,

* Lord Hardwicke, however, was tolerably conversant with English literature. When Mr. Nicholls waited upon him with the first volume of Sherlock's Sermons, his lordship asked him whether there was not one on John xx, 30–31; and on his replying in the affirmative, desired him to turn to the conclusion, and repeated verbatim, the animated contrast between the Mahometan and Christian Religions; beginning; "Go to your natural religions," (Disc. ix,) to the end. Such was the impression he had retained for thirty years.

did not learn Latin until after he was chancellor, was once haranguing the House of Lords with some warmth on the subject of a war with Spain. In the course of his speech, he used the expression, "pendente bello." "Flagrante bello, you mean, my lord," interposed Lord Carteret, whose correct ear was offended with she unclassical expression. A learned counsel in the Exchequer, the other day, spoke of a nolle prosēqui; "Consider, Sir," said Mr. Baron Alderson, "that this is the last day of term, and don't make things unnecessarily long." Perhaps the learned gentleman held, with Sir Matthew Raymond, "that the courts were not bound by the Latin of the classics." Lord Kenyon once thought proper to interrupt Serjeant Hill in the midst of one of his quotations—Dr. Parr was sitting on the bench at the time—with the observation, "We don't talk the best Latin in the courts, brother Hill." On the trial of the seven bishops, one of their number, the Bishop of Peterborough, on behalf of himself and his brethren, entreated the court that the "Information" against them might be read in English, as they did not understand *law Latin.* Roger North ridicules the great Sir Matthew Hale for some absurd mistakes that that eminent judge made in a translation he published of some portions of "Cornelius Nepos"—*Elatus est in lecticulâ*—anglicé, "he was carried out (after he was dead) upon a bier," he translated—"he was lifted up in his bed." *Et sic globus iste consensionis, dissensione unius hominis, disjectus est* (that is "and so the confederated party was broken by one man's leaving them,") he rendered—"and so that ball of contention, by the dissent of one man, was let fall." But bad Latin is not confined to the lawyers, One of the most eminent anatomists of our day has been heard

to condemn *à priori* reasonings.* This is not quite so bad as an anecdote we have heard (we vouch not for its authenticity) of a "Johnian," at his examination, construing a well known line in Horace thus;—"*Exegi*, I have ate up, *monumentum.* a monument, *perennius*, harder, *ære*, than brass." "Have you so," exclaimed the examiner; "then you will not be able to live here, for we háve no nutriment strong enough for such a digestion."

Lord Kenyon's want of scholarship and good taste is well known. He was fond of intruding the little information he had picked up—whether or not it was appropriate to the matter at issue. "When he wished," says Mr. Espinasse, "to express his opinion that the established rules of practice should not be departed from, it was embellished with the figurative recommendation of the propriety, 'stare super anti-

* Sir Robert Walpole was not much versed in classical literature. When Mr. Hardinge was clerk of the House of Commons, a situation he owed to Walpole's influence, the minister, in addressing the house, misquoted Horace thus—

"——— Hic muus aheneus esto
Nil conscire sibi *nulli* pallescere *culpæ.*"

on which Pulteney observed, that the honorable gentleman's Latin was as bad as his politics. Sir Robert adhered to his version, and offered to bet his opponent a guinea that he was right, proposing Mr. Hardinge as arbiter. The bet being accepted, Hardinge rose with ludicrous solemnity, and gave his decision against his patron. The guinea was thrown across the House, and when Pulteney stooped to pick it up, he observed, that it was the first *public money* he had touched for a long time. After his death, the guinea was found wrapped up in a piece of paper, on which the circumstance was recorded.

quas vias.' *.* His praise of the wisdom of former decisions was not confined to the quotation before given, but was abbreviated into the convenient form of 'stare decisis'—equally classical, and expressively appropriate. In ruling a point at *Nisi Prius*, where he held that a party who bid for a lot at an auction should be at liberty to recall it, and retract his bidding, by a poetical license of changing time into place, the learned judge expressed it, by giving the bidder, as he classically termed it, a '*locus pœnitentiæ.*'" But the quotation, "Melius est petere fontes quam sectari rivos," was the most favored of all. He paraded it on every occasion, evidently with the greatest satisfaction. Sometimes he informed a counsel that "the court would take time to consider a certain case, 'propter difficultatem.'" "We will look into this act of parliament with eagle's eyes, and compare one clause with another, 'noscitur a sociis.'" When two learned barristers were once disputing before him whether a particular letter was evidence or not, he interposed, and observed, in the blandest accents, "Modus in rebus—there must be an end of things." It is said he once concluded a lengthy charge to the jury in these words:—"Having thus discharged your consciences, gentlemen, you may retire to your homes in peace, with the delightful consciousness of having performed your duties well, and may lay your heads upon your pillows and say, 'aut Cæsar, aut nullus.'" Another time, to prove the conclusiveness of a fact, he observed, "It is as plain as the nose on your face—*latet anguis in herbâ.*" He once declared to the court, that although he had known Mr. Murphy for many years, and spent many pleasant hours with him, still he must apply to him the same rules he would to an Indian, a

Turk, *or* a Mahometan. It has been said in Paine's trial he enumerated to the jury the names of several learned and dignified persons who had been conspicuous for their attachment to Christianity, concluding thus—"Above all, gentlemen, need I name to you the emperor Julian, who was so celebrated for the exercise of every Christian virtue, that he was called Julian the *Apostle.*" Indignant at the artifice of a party desiring to gain time, he once exclaimed, "This is the last hair in the tail of procrastination."*

The student who, anxious to qualify himself for his profession, consults the various works written on law education, even those which have come from the pen of practising lawyers, will find, if we mistake not, his heart sink within him at the immense variety of general information they recommend him to acquire. Mr. Chitty advises him to fill up his leisure hours with the study of anatomy, physiology, pathology, surgery, chemistry, medical jurisprudence and police. He observes, that "all lawyers should study mankind, so as to be able to detect, under every semblance, the exact character of every individual with whom he is to have transactions in business." In "Williams's Study and Practice of the Law," a still more extensive course is recommended. Any one who should venture to pursue the line of study laid

* Lord Kenyon's style of oratory reminds us of a young Irishman's account of the first bar-speech he ever heard. "Your lordships perceive that we stand here as our grandmother's administrators *de bonis non;* and really, my lords, it does *strike* me that it would be a monstrous thing to say, that a party can now *come in*, in the very *teeth* of an act of parliament, and actually *turn us round*, under *color of hanging us up*, on the *foot* of a contract, made behind *our backs*."

down in such works, would find but little time left him for the study of the law. The time which such courses would necessarily occupy, might be much more profitably employed in the acquisition of legal knowledge. A reasonable acquaintance with English history is certainly desirable in the law student; and we think also that he would find in the study of some of those works which treat on "natural law," a very excellent preparative to the study of professional law. Such a study would present to his view distinctly the great end of that system, with whose practical details he would afterwards have to make himself acquainted. Macklin at one time intended his son for the bar, and entered him at the Temple. "And what book, sir, do you think I made him begin with?" said the veteran, in telling the circumstance. "Why, I'll tell you, sir, the Bible, the Holy Bible!" "The Bible, Mr. Macklin, for a *lawyer?*" "Yes, sir," replied Macklin, "the properest and most scientific book for an honest lawyer, as there you will find the foundation of all law and morality."*

General knowledge too is unquestionaly necessary for the lawyer. Ludicrous mistakes have frequently occurred through the deficiencies of some of them in this respect. We have heard an anecdote, somewhere, of an eminent barrister examining a witness in a trial, the subject of which was a ship. He asked, amongst other questions, "Where the ship was at a particular time?" "Oh," replied the witness, "the

* When Sir E. Coke was made solicitor-general, Whitgift, the archbishop of Canterbury, sent him a Greek Testament, with a message, "That he had studied the common law long enough, and that he ought hereafter to study the law of God."

ship was then in quarantine." "In Quarantine was she? And pray, sir, *where* is Quarantine?"*

Another instance given by Mr. Chitty of the value of general knowledge to the lawyer, is worth citing. It is well known that a judge was so entirely ignorant of insurance causes, that after having been occupied for six hours in trying an action "on a policy of insurance upon goods (Russia duck) from Russia, he in his address to the jury, complained that no evidence had been given to show how Russia ducks (mistaking the *cloth* of that name for the *bird*) could be damaged by sea water, and to what extent!"

Dr. Arnott, in his "Elements of Physics," relates the following anecdote, which illustrates our position:—"A young and not yet skillful Jehu, having run his phaeton against a heavy carriage on the road, foolishly and dishonestly excused his awkwardness in a way which led to his father's prosecuting the old coachman for furious driving. The youth and his

* A story something similar is told by Mr. Espinasse. In an action on a policy of assurance, the case turned on the fact whether the ship insured was in safety on the day the insurance was effected. The mate was called by Erskine, who asked him whether on the day in question the ship had not met with foul weather and was in jeopardy? The witness repeated the words, "in jeopardy," in such a manner as showed he did not know what they meant. As an answer to the question was important, to his client, Erskine attempted to get one several times, but without success; until at last disgusted with the stupidity of the witness, he exclaimed, "Pray, sir, are you thinking in what part of the world *jeopardy* is? Perhaps you would wish for a map to find it out."

A friend of ours once asked an American merchant if he had any correspondence with Berbice. "Berbice! Berbice!" he replied; "no! who is *he*?"

servant both deposed that the shock of the carriage was so great as to throw them over their horses' heads; and thus they lost the cause by unwittingly proving that the faulty velocity was their own." Had the counsel or attorney concerned in the prosecution known the simple elements of the doctrine of forces the action would never have been brought.

There is an old story told of an Irish barrister who, in referring to the two great bulwarks of English freedom—Magna Charta and the Bill of Rights—confounded the sovereigns under whom they were respectively obtained. And a celebrated English lawyer, in quoting a statute, gravely observed that it was passed in the reign of one of the Edwards or one of the Henrys, he did not know which. An anecdote has been told of a learned barrister once quoting some Latin verses to a brother "wig," who did not appear to understand them. "Don't you know the lines?" said he; "they are in Martial." "Marshall," replied his friend, "Marshall—oh! I know—the Marshall who wrote on *underwriting*."* When this anecdote was related to a certain judge of the Court of Review, he is reported to have said, "Why, after all, there is not much difference between an *under-writer* and a *minor poet*."

A well-known lawyer, who has not long been dead—Mr. Marryatt—declared that he never opened any book, after he left school, but a *law* book. But Mr. Marryatt was certainly no instance in favor of such a practice. Once, when addressing a jury, he was speaking of a chimney on fire, and exclaimed—"Gentlemen, the chimney took fire—it poured forth

* Marshall on Insurance.

volumes of smoke—*volumes* did I say? Whole *encyclopædias?*"* This anecdote clearly establishes the propriety of reading nothing but law!

The intention of our previous observations must not, however, be mistaken.

"The proper study of the Lawyer is Law," as Pope *would* have said, had his essay been "on Law," instead of "on Man." Any one who hopes to acquire the reputation of a lawyer, must we are sorry for that class of students who are usually called "blue bottles," but the fact is so—must study law. When Servius Sulpicius consulted Mucius Scævola on some point of law, he was unable to understand the technical terms that the great jurisconsult employed. "*Turpe est,*" was the observation of the lawyer, "*patricio et nobili et causas oranti, jus, in quo versaretur, ignorare.*" Several of our most eminent lawyers have felt so much the necessity of the lawyer's allowing nothing to interfere with his legal studies, that they have expressed themselves on the subject with a degree of exaggeration. And this may be seen by comparing their practice with their professions.

In this way Sir Mathew Hale, one of our most learned lawyers, and to whose knowledge of divinity and the dead languages Dr. Parr has borne strong testimony, observes, that "the law will admit of no rival, nothing to go even with it." "My ultimate knowledge of the nature of my profession," Sir William Jones observes, in a letter to the Bishop of St. Asaph, "obliges me to assure you that it requires the

* There have been many absurd anecdotes of Mr Marryatt's "mistakes" which we believe to be false. The assertion that he once applied for two *mandami* must be untrue.

whole man, and admits of no concurrent pursuits." Lord Ellenborough, in his studentship, applied himself with so much zeal to his professional studies, that he was said to have entered into a recognizance to read nothing, and discuss nothing, but law. But there are few minds which could safely endure such a course of study as this—few which do not absolutely require relief—and, if it is refused, do not lose their strength and sink into imbecility. Sometimes indeed *other* results follow; and students, whose minds have been incessantly occupied with one subject, have, at last, encountered all the evils that ensue highly-wrought excitement. This should be avoided; but, without doubt, those who study law in the idle, desultory, "every-other-day" style of some men, will find that the reward of the husbandman is never to be reaped but by those who have shared his toils.

We cannot wonder that at times, the study of the law should excite disgust, especially in individuals of a refined and elegant taste. That taste is shocked at every step: some barbarous phrase—some violent perversion of metaphor—is constantly rising up in mockery before them.

Habit, however, will reconcile them to this. "I have heard," says Addison, probably referring to Lord Somers, "one of the greatest geniuses this age has produced, who had been trained up in all the polite studies of antiquity, assure me, upon his being obliged to search into several rolls and records, that, notwithstanding such an employment was, at first, very dry and irksome to him, he at last took an incredible pleasure in it, and preferred it even to the reading of Virgil and Cicero."*

* "In the study of the law," observes Gray, in a letter to

When a very eminent special pleader was asked by a country gentleman if he considered that his son was likely to succeed as a special pleader, he replied, —"Pray, Sir, can your son eat saw-dust without butter?"

Mr. Canning, who studied the law for some time, seems to have felt in full force the disgust it often raises in highly classical minds. In his poem on "Friendship," he appears to speak from his own experience of the repulsive character of legal studies.

"Oft when condemn'd 'midst gothic tomes to pore,
And dubious con th' embarrass'd sentence o'er,
While meteor meaning sheds a sickly ray
Through the thick gloom, then vanishes away,
With the dull toil tired out, th' indignant mind,
Bursts from the yoke and wanders unconfin'd."

Hear, however, what a great lawyer—and a great man too!—has said of the study of the law: "Our profession," observes Dunning, "is generally ridiculed as dry and uninteresting; but a mind anxious for the discovery of truth and information, will be amply gratified for the toil in investigating the origin and progress of a jurisprudence, which has the good of the people for its basis, and the accumulated wisdom of ages for its improvement." And, as to the difficulties in his path, the student need only to remember

Mr. West, "the labor is long, and the elements dry and uninteresting; nor was any body (especially those that afterwards made a figure in it) amused, or even not disgusted at the beginning." "I have heard it observed," remarks Dugald Stewart, "that those who have risen to the greatest eminence in the profession of the law, have been, in general, such as had at first an aversion to the study."

that, before the resolute, obstacles rapidly disappear. "There are few difficulties," observes Mr. Sharpe, "that hold out against *real* attacks; they fly like the visible horizon, before those who advance. * * If we do but go on, some unseen path will open among the hills." "Some travellers," says Bishop Hall, "have more shrunk at the map, than at the way: between both how many stand with folded arms!"

Lord Mansfield used to say, that the quantity of professional reading necessary, or even useful, to a lawyer, was much less than is generally supposed. But he observed, that "the lawyer should read much, in his own defence, lest, by appearing ignorant on subjects which did not relate to his particular branch of the profession, his ignorance of that branch might be presumed."

Mr. Chitty relates the following anecdote, illustrative of the necessity of the lawyer's not confining himself to acquiring a knowledge of the principles of only one branch of professional learning. Recently a barrister, practising only in the Courts of Law, very eminent for his legal attainments, advised that there was no remedy whatever against a married woman, who, having a considerable separate estate had joined with her husband in a promissory note for £2500, a debt of her husband; because he was of opinion that the contract of a married woman is absolutely void, and referred to a decision to that effect, (Marshall v. Rutton, 8. T. R. 545,) he not knowing, or forgetting, that in equity, under such circumstances, payment might have been enforced out of the separate estate. And afterwards, a very eminent equity counsel, equally erroneously advised, in the same case, that the remedy was only in equity; although it

appeared upon the face of the case, as then stated, that, after the death of her husband, the wife had promised to pay, in consideration of forbearance, and upon which promise she might have been arrested and sued at law. If the common law counsel had properly advised proceedings in equity, or if the equity counsel had advised proceedings by arrest at law, upon promise, after the death of the husband, the whole bebt would have been paid. But upon this latter opinion, a bill in chancery was filed, and so much time elapsed before decree, that a great part of the property was dissipated, and the wife escaped with the residue into France, and the creditor thus wholly lost his debt, which would have been recovered if the proper proceedings had been adopted in the first or even second instance.

We would say of legal education, as we would say of all other education—that perseverance and a habit of attention are of more value than that sort of natural talent which consists in quickness of apprehension. A celebrated ambassador of the last age, when told what a clever boy his son was, exclaimed, "I would rather you had told me how *industrious* he was." Sir Henry Wotton, the famous provost of Eton College, we are told by Aubrey, "could not abide wits. When any young scholar was commended to him as a wit, he would say, 'out upon him! I will have nothing to do with him; give me the plodding student: If I would look for wits, I would go to Newgate for them, there be the wits.'" Something similar was the opinion of Hogarth: "I know of no such thing as genius," said he to Mr. Gilbert Cooper; "genius is nothing but labor and diligence."

The well-known Judge Dodderidge declares that

he found by experience, that "among a number of quick wits in youth, few are found in the end very fortunate for themselves, or very profitable to the commonwealth."

Sir Isaac Newton used to ascribe his vast discoveries, in nowise to the superiority of his mind, but to that habit of patient thinking to which he had always accustomed himself.

In thus placing the claims of industry so high, we are not anxious in any way to depreciate the value of native genius. We acknowledge that mere industry, that is, industry which does not act as an auxiliary to *some degree* of natural talent, will never make a man a lawyer. Dr. Johnson says, that in the formulary and statutory part of our law, a plodding blockhead may excel; but in the ingenious and rational part of it, a plodding blockhead can never excel. The distinction here stated is not very obvious. A plodding blockhead may store his head with the facts of law, but can never apply them—his mind, like the oyster that holds the pearl, contains a treasure, valuable to every one except the owner. We still think, however, that a moderate share of ability, aided by great industry, will accomplish more than the quickest and most lively talents.

And be it remembered that industry itself, as Dr. Barrow observes, "doth argue a generous and ingenuous complexion of soul. It implieth a mind not content with mean and vulgar things (such as nature dealeth to all, or fortune scattereth about,) but aspiring to things of high worth, and pursuing them in a brave way, with adventurous courage, by its own forces, through difficulties and obstacles." "Much may be done," says Dr. Johnson, "if a man puts his

whole mind to a particular subject. By doing so, Norton* has made himself the great lawyer which he is allowed to be." A habit of application—a resolution to suffer no inducements of pleasure, however innocent, and, in themselves, however commendable, to interfere with his professional studies, will do more, we undertake to say, to form a good lawyer, than all the patent recipes put forth under the appellation of "hints," "methods," "advice," "courses," put together.

"Without acquiring a capacity of making a solitary life agreeable," says Roger North, "let no man pretend to success in the law. I have heard his lordship (Lord Keeper Guilford) often repeat a lesson the citizens used to their apprentices, 'keep your shop, and your shop will keep you,' as being no less true of a lawyer with respect to his chamber." There are more aspirants after honors, whether legal or not, that fail through a *weakness of the will*, than through a *weakness of the mind;* who, while they are ambitious, are slothful—would win the crown, but not run the race—covet the glory of success, but will not endure the fatigues of the struggle. "They would lie still," says Dr. South, "and be great; sleep on, play, and be learned: honors and dignities must come to their bedside, wait the time of their rising (forsooth), and even court their acceptance. But," he adds, "nature and providence have cast the course of things much otherwise; and honor and greatness will wait upon none but such as first wait upon them, which men must not think to do by lying and sleeping: for, as wisdom generally brings men to honor, so study and

* Sir Fletcher Norton, afterwards Lord Grantly.

labor must bring them to wisdom; and the way to be wise, is to consult their pillow less.* *Industry for the most part opens the way to preferment; and* IT IS THE SWEAT OF THE BROW THAT ENTITLES IT TO THE LAUREL." "Prudens qui patiens," was the motto of our great Coke: a motto which the negro pithily paraphrases—"Softly, softly, catch monkey."

If we were desirous of extending our remarks further, we might observe that in our own days a habit of industry is especially required of the lawyer, seeing that the evident inclination of the courts, is to adopt enlarged and liberal principles of construction, to the injury of those strict technical rules, which, of old, guided their decisions. Thus our law is gradually forfeiting its pretensions, to be held a law of principle —and will, therefore, become less readily grasped than it was heretofore. If our courts halt any ways short of substituting notions of *equity* (in the vulgar sense of the term) for the principles of law; that is, unless they make the law for every individual case, abandoning precedents altogether, our law will exist in the shape of an immense mass of decisions, bearing no relation to one another, wanting the magic chain which now connects so many of them together. See how the lawyer will then stand.— Mr. Park, writing in 1828, computes the number of points in a moderate law library, at about two millions and a half. Rejecting a half for criminal and parish law, and points of practice and pleading, a million and a quarter would remain, which relate to property

* Dr. Williams once asked Dr. Abraham Rees, how, amidst his numerous avocations, he found time for the compilation of so vast a work as his Cyclopædia? He replied—*By rising early.*

and civil rights. Making the most liberal allowance for such cases as were repeated, a million still would remain, with which the lawyer would have to be conversant. This computation was made eleven years ago. Since then the "points" have multiplied, and are multiplying—the changes in the law contributing to this result.

Now, if we have not misrepresented the inclinations of our courts, and if the law is, as we have said, gradually forfeiting its pretensions to scientific structure, will not industry the most persevering, to which weariness and cessation must be unknown, be imperatively demanded of the lawyer, from whom a perfect familiarity, a ready mastery over such a gigantic accumulation of facts is expected? This will require almost superhuman power to effect. They must not be mere men who will be able perfectly to accomplish such a task. *Non Angli, sed angeli.* But we must proceed.

The various systems of law reading, and courses of legal instruction laid down by divers writers, are all framed in ignorance of the fact, that experience has long proved the fallacy of the common principle, "what is sauce for goose is sauce for gander." We do not possess a sufficient acquaintance with Mr. Bentham's "Book of Fallacies," to enable us to pronounce whether he exposed this monstrous error. —for an error it undoubtedly is. Subject two men to the same course of treatment, whether it be physical exercise or medicine, or mental study or argument, and you will find how little the effects will congrue. Whether the distinction between individuals' minds be native, or the result of the earliest education, that which is unconsciously effected, or

whether it be the result of diversity of circumstance, still we at least find that what is good and fitting for one is often bad and hurtful to another. Neither our brains nor our stomachs can endure alike the same treatment. Writers on education, instead of prescribing the number of hours, and the precise sort of books a man should read, ought rather to confine themselves to insisting on those general principles to which every good system of education is reducible. The period of study must be regulated by circumstances.

Coke (Inst. 1, c. 1, s. 85,) quotes the following verses with approbation:—

> " Sex horas somno, totidem des legibus æquis
> Quatuor orabis; des epulisque duas,
> Quod superest ultró sacris largire Camænis."

Of these Sir W. Jones has made the following versions:—

> " Six hours to sleep, to law's grave study six,
> Four spend in prayer—the rest on nature fix."

Rather (he adds)

> " Six hours to law, to soothing slumber seven;
> Ten to the world allot, and all to heaven."

He has here reduced the day to three-and-twenty hours.

Bishop Williams, Lord-keeper, in the reign of James I., is one of the most indefatigable students of whom history makes any mention. " From his youth to his old age," says his biographer, Dr. Hacket, " he

asked but *three hours* sleep, in twenty-four, to keep him in good health. * * It was ordinary with him to begin his studies at six of the clock, and continue them till *three of the morning*, and be ready again by *seven*, to walk in the round of his indefatigable labors."

Sir Matthew Hale, for the first two years of his legal studies, read sixteen hours a day, which, however, almost brought him to his grave. He then reduced himself to eight; but used to say he thought that six hours a day, "with attention and constancy, was sufficient." Roger North considers four hours "a sufficient quantum;" while, according to Sir Eardley Wilmot, "six hours of severe application" is necessary. "I had heard much of——," an eminent person once remarked to Mr. Warren, in allusion to a young man who had lately entered public life, "and was disposed to think well of him, till I heard him say he had read fourteen hours a-day—I have never thought any thing of him since." And yet, what have we heard of Lord Eldon's studies before he was called to the bar! He used to read law before his call, with so much application, as to excite the apprehensions of his medical friends. He would debar himself of his needful rest—rising as early as four o'clock, in the morning, and often sitting up late at night with a wet towel tied round his head.

Amongst our hard-reading lawyers, Mr. Butler deserves mention. He has communicated the system of study he pursued in these words:—"Very early rising—a systematic division of his time—abstinence from all company, and from all diversions not likely to amuse him highly—from reading, writing, or even thinking on modern party politics—and, above all,

never permitting a bit or scrap of time to be unemployed—have supplied him with an abundance of literary hours. His literary acquisitions are principally owing to the rigid observance of four rules:—To direct his attention to one literary object only at a time; to read the best book on each side; to find out men of information; and, when in their society, to listen, not to talk." These are rules of universal application.

Before we leave this branch of our subject, we may mention that Sir M. Hale has said that "he never made breakfasts; but used in the morning to drink a glass of some sort of ale. That he went to bed at nine, and rose between six and seven, allowing him a good refreshment for his sleep."

In former times, attendance in the courts filled the same part in a legal education that pupilage in a barrister's chamber does at present. The reason for this change is obvious. Then the law, as administered by the judges, was the chief object to which the student had to direct his attention; whereas now, the practice of the court principally requires his attention. In Lord Guilford's days, we hear of barristers' having clerks who seemed to have filled an intermediate space between the honorable fraternity who now bear that name, and the pupils of the present day. These clerks appear to have been occupied chiefly in conveyancing, which was then the only branch of the profession in which there was any thing like a complicated system of practice. Many of our most distinguished men have never enjoyed the benefit of a regular pupilage. Lord Mansfield was an eminent instance of this kind. When he was a student, he belonged to a law debating society, of a superior class to those which exist now-a

days. So carefully did the members prepare their arguments, that Lord Mansfield found his useful to him not only when at the bar, but even when on the bench. Mr. Justice Buller, who was raised to the bench when but thirty-five years of age, whose reputation was acquired as a special pleader, was in the office of Mr. Ashurst, afterwards also on the bench; and it was with him the practice, now so common amongst law students, of passing a certain time in a pleader's chamb_ mainly originated. "There are but two ways," said a great judge, "for getting on in the law—special pleading, or a miracle:—I preferred the former." Sir Frederick Pollock, it is well known, found special pleading the best road 'o fame and honor.

For information of a practical description a "pupilage" is undoubtedly necessary. The most industrious study would never teach the surgeon how to amputate a limb, or even bandage a fracture.

The law lectures at the London University and King's College have not, it is generally considered, proved of much service to the cause of law education: but probably this is owing in some degree to want of encouragement. The objection that has been advanced against them, viz., that they are, from their form, not calculated to impart instruction in law, as no illustrations can be used in them, would apply as well to moral philosophy, mathematics, history, languages, &c., on which lectures have been delivered in every European University with distinguished success. Some one facetiously recommended Mr. Amos to meet this objection by engaging two persons, when he was lecturing on "Ejectments," to represent John Doe and Richard Roe; and, in order to illustrate his meaning,

John Doe was to kick Richard Roe out of the theatre! As substitutes for either study or pupilage, it would be absurd to recommend law lectures; but, as auxiliaries to these, we believe them to be beneficial.

A clerkship in a solicitor's office has also been recommended by high authority as a useful school for the bar. Lord Tenderden, when he resolved to turn his attention to the law, was for some time in the office of a large firm in Craig's Court. This step he was induced to take upon the recommendation of Judge Buller. Mr. Bently, the conveyancer, who died two or three years ago, was for a considerable time in one of the principal agency houses in London; and has been often heard to declare, that he owed to the habits he there acquired, a facility of mastering every document and case that came before him, however difficult or repulsive it might be. This gentleman, who was eminent in his branch of the profession—and there is none which requires more positive learning—never enjoyed the advantage of pupilage in any barrister's chambers. All the information and experience he obtained, he acquired during his clerkship. Chief Baron Thompson commenced his legal studies in an attorney's office, as also did Lord Wynford and Sir William Grant. Lord Thurlow was articled, together with Cowper the poet, to a solicitor near Bedford Row; and his great predecessor, Lord Hardwicke, passed through the same ordeal. Dunning was in his father's office for some considerable time. Lord Macclesfield actually practised as an attorney. Lord Kenyon served his articles. Sir William Garrow passed some time in a solicitor's office, as did Sir Samuel Romilly. Lord Gifford was regularly articled; and so also was Lord Lifford, Chancellor of Ireland,

and Sir George Wood, and Sir Francis Buller, very learned and distinguished judges.

If we had to refer to eminent men of the present day, we should find little difficulty in pointing to some great names who have ascribed their success in life to the training they have received in attorneys' offices. The names of Wilde, Adolphus, Preston, and many others, could readily be mentioned. Lord Brougham once publicly declared in the Court of Chancery, that if he had to recommence his legal studies, he would begin as a clerk in an attorney's office. These are most assuredly strong testimonies in favor of this line of study; and there can be no question that in a solicitor's office much miscellaneous knowledge of great use may be *picked up* (we use the term advisedly). But that knowledge, because it is miscellaneous, must necessarily be superficial, and is valuable chiefly because it is in its character more practical than that which mere study or pupilage would probably confer. The habits acquired in the school of which we are speaking are also undoubtedly desirable, as the student is there accustomed to severe application, and to labor conversant not always with topics the most grateful to the mind. Those habits of intermittent attention which characterise such men as Lord Bacon has called "bird-witted" are there corrected; and there also the student acquires a dexterity and readiness in the application of his knowledge. He is often placed in situations which demand and therefore develope that indescribable attribute, *tact;* and being required to be able at a moment's warning to afford counsel on any point, learns therefore to keep his knowledge in constant readiness. On the other hand these advantages, not altogether unattain-

able elsewhere, are purchased at the sacrifice of that profound law learning which distinguished the lawyers of past times, and which they obtained by an almost exclusive dedication of their time to its acquisition. This could scarcely be the fruit of studies, in themselves so interrupted, and never prosecuted below the surface, as those for which the embryo attorney can find time.* And thus at once would the character of the bar be reduced.

The bar would lose in another way. At the present time a large proportion of its members have received their education at one or other of our universities. Did an attorney's office become the school for the bar, how few of such men should we have amongst us! It is difficult to overrate the importance of such men to the bar. From them has been derived its "gentlemanly" tone, its freedom from that low artifice and tricksy cunning which degrades, in so many cases, the continental bar, and compels the institution, by foreign governments, of positive regulations to deter the advocates from plundering their clients and deceiving the courts. Upon the law itself too, the academical education of its professors has an undoubtedly beneficial effect. Bringing to its study minds schooled in dialects, and enlarged by an acquaintance with the noblest productions of literature, they communicate to it imperceptibly that liberal and comprehensive spirit which pervades their own minds. If we look amongst the most distinguished lawyers of the present day, we shall find none more illustrious than those

* If we are told that Mr. Serjeant Wilde is a profound lawyer, we would ask how many Serjeant Wildes are there to be found? These are the exceptions and not the rule.

who have acquired university honors. Sir Frederick Pollock was the senior wrangler of his year; Lord Lyndhurst, second senior wrangler and second Smith's prizeman; Sir N. Tindal, first medallist and senior wrangler; Mr. Justice Littledale, senior wrangler and first Smith's prizeman; Sir L. Shadwell, second wrangler; Lord Langdale, senior wrangler and first medallist; Mr. Baron Alderson, senior wrangler, first medallist, and first Smith's prizeman.* We need not go very far back to increase the list. Lord Ellenborough was a third wrangler and first medallist; Baron Graham a third wrangler; Lord Eldon, Lord Tenterden, and Mr. Justice Taunton, severally obtained the chancellor's English Essay Prize, as also did Mr. Justice Coleridge.

Coke thus speaks of the advantages of a university education. "From this argument, logically drawne à divisione," says Coke, "it appeareth how necessary it is that our student should (as Littleton did) come from one of the universities to the study of the common law, where he may learn the liberall arts, and especially logic, for that teacheth a man, not only by just argument to conclude the matter in question, but to discerne between truth and falsehood, and to use a good method in his studie, and probably to speak to any legall question." (Co. Litt. 235.)

But whilst we beg thus to record our conviction, that no student comes to the bar more qualified for success, than he whose general education has been completed at Oxford or Cambridge, we must observe

* It is a remarkable circumstance, that Sir William Follett passed through the university without exciting the slightest notice.

that whoever expects that his university laurels will avail him in the acquisition of business, or secure him a reputation at the bar, will find himself grievously mistaken. "Poor young man!" said Conversation Sharpe, of a young gentleman who, on the strength of his university honors, conducted himself with much superciliousness in London society, "He fancies his Cambridge medals will pass current in the circles of London."

Serjeant Maynard, a famous lawyer in the days of the Stuarts, called law an "ars bablativa;" and Roger North, in his "Discourse on the Study of the Law," adds, "That all the learning in the world will not set a man up in bar practice, without the faculty of a ready utterance; and that is acquired by habit only, unless there is a natural felicity of speech." Mr. Warren mentions that he once accompanied a very learned and highly gifted friend to a public meeting, where they heard a second-rate orator declaim with great violence and effect. "I would give a thousand pounds," said his friend to Mr. Warren, "to be able to make, off-hand, such a clear extempore statement of facts as that fellow. What folly it was for me to attempt to go to the bar!"*

In old days it was customary amongst the Temple students to assemble in the cloisters towards evening, and exercise themselves by putting points of law and

* A student once called on Lord Mansfield with a letter of introduction; and after some inquiries, the veteran judge asked him if he were perfect in Coke upon Littleton. He replied that he was not altogether perfect, but intended reading it over again for the third time. "Take a little rest, sir, take a little rest," said his lordship; "it is my advice that you should now take a turn with Enfield's Speaker."

arguing them amongst themselves. This practice has been highly recommended by some of our first lawyers, both by precept and example.

Sir Henry Finch, a judge in the reign of Charles I, and uncle to Lord Nottingham, used to say that a lawyer ought to read all the morning and talk all the afternoon. Lord Guilford used to say that no man could be a good lawyer who was not a good put-case. Lord Nottingham was requested by the Society of the Middle Temple, after the great fire of London had burnt the old Temple cloisters, to obtain the assent of his society to a plan they had of building chambers on the site. But he rejected the proposal at once, declaring he would not consent that impediments should be thrown in the way of those who desired to continue the laudable custom of putting cases. Sir Christopher Wren, however, by building chambers over the cloisters, as may be seen at the present day, reconciled the wishes of both.

We have thus briefly touched on the principal branches of that most important subject of "law education." We must close our observations with a few remarks that nearly relate to the subject.

"Toujours perdrix," is not the best possible fare. The mind as much requires relaxation, as the body stands in need of rest. The species of relaxation depends upon the nature of the labor to which the mind has been previously subjected, and also to the disposition of the mind itself. Lord Guilford, when a student, used to refresh himself after study with music, in which he was a proficient. He played on the "bass or lyra viol, which he used to touch lute fashion upon his knees." This passion for music ac-

companied him through life, and contributed greatly to his enjoyments. But

"——— different minds
Incline to different objects——"

and most assuredly there are some people "who have not music in their souls," and would feel themselves but little refreshed by the most ravishing strains of melody. Lord Guilford's great friend, the famous, or rather the infamous, Duke of Lauderdale, used to say, as we learn from Pepys' Diary, "that he had rather hear a cat mew than the best music in the world; and the better the music, the more sick it made him."

Sir Matthew Hale, a character somewhat dissimilar, was utterly indifferent to music.

Mr. Windham has observed that four of the greatest men he ever knew cared nothing for music—Burke, Fox, Dr. Johnson, and Pitt. Sir James Mackintosh professed the same indifference to sweet sounds, so much so, that Conversation Sharpe used to suggest, as a thesis for the physical schools at Edinbugh, "What was the precise effect of music on the sensorium of Mackintosh?"

Mr. Justice Yates was in the habit of declaring that whenever intense application to any legal studies wearied his mind, he used to read a few pages of Dean Swift's works, which not only relieved him while he read, but sent him back again to his dry law in perfect good humor.

Lord Camden was excessively fond of the old romances: the Cassandras and Clelias of the ancient

imaginative writers, amused him by their adventures, after he had escaped from

> "The tedious forms, the solemn prate,
> The pert dispute, the dull debate,"*

which occupy the attention of

> "The drowsy bench, the babbling hall."

In a letter to Mr. Garrick he declares his partiality for the "Seven Champions of Christendom."

A distinguished living statesman, who has carried into his retirement the respect and good-wishes of all parties, has been heard to declare that he used to find a new Waverly novel the best restorative for his mind, when exhausted by official labors.

Selden was in the habit of seeking recreation at the theatre. Lord Stowell too was fond of dramatic entertainments.† He was to the last a regular attendant

* Sir William Blackstone's "Lawyer's Farewell to his Muse."

† Brindley, the great engineer, was once prevailed on to go to a play. The representation had such an effect on him, that he complained for several days of being unable to attend to business—his ideas being confused, and his attention distracted. He resolved, therefore, never again to visit the theatre. Sir M. Hale said that when he commenced the study of the law, "he took up a resolution, which he punctually observed ever since, never to see a play, having spent all his money on them at Oxford, and having experienced that it was so great an alienation of his mind from his studies, by the recurring of the speeches and actions into his thoughts, as well as the loss of time when he saw them; that he had often disputes with Mr. Selden, who was his great friend, and used to say, he found so great refreshment by it, but he had so much knowledge of the inconvenience of them that he would not see one for £100."

at the Christmas pantomimes, and avowed a strong predilection for the interesting performances of the itinerant comedians, Punch and Judy. Lady Stowell, we have heard, did not share her husband's taste. She had a particular *penchant* for attending executions; or, as a friend has observed, her ladyship was fond of a *drop*."

We do not think it is of much importance with what object the mind concerns itself, so as it is employed. We never rest ourselves better, than by exercising another set of muscles, than those we had formerly used.* "*Libera me, Domine, absit ut unquam mihi contingat vacare*,"† says an old divine. Without doubt, the pursuits of literature are the most desirable, because they are the most useful. We see, however, no objection to the amusement of one of our most eminent advocates—he had certainly Socrates, Lord Erskine, and the great Sir W. Jones, as precedents in his favor—to wit, saltatory exercise. The present vice-Chancellor, and another great lawyer, Mr. Fearne, were fond of aquatics. The latter, however, would often recreate himself, as Lord Brougham has been known to do, after the fatigues of the Chancery Court, a Cabinet Council, and a debate in the Lords—solving difficult problems, or speculating in the higher branches of physical science.

Sir Edward Coke found recreation in a game at bowls. The present Lord Lyndhurst is said to find

* "Le changement d'étude est toujours un decassement pour moi," says the Chancellor D'Aguesseau.

† For the benefit of gentlemen who have forgotten their Latin, "God forbid I should ever be idle."

especial delight in constructing models for churches or houses; and used, when in full practice at the bar, to amuse himself, on a rainy day in the long vacation, with repairing what his children or servants might have demolished.

Any thing is better than mere idleness. "We should never do nothing," says a moralist. Helvetius has declared, that listening to a concert for two hours fatigued him, while he could play on an instrument all day long. "There will be time enough for repose in the grave," said Nicole to Pascal. This matter cannot be better summed up than in the words of the incomparable Quarles: "Let thy recreation be manly, moderate, seasonable, lawful: if thy life be sedentary—more tending to the exercise of the body: if active—more to the refreshing of thy mind. The use of recreation is to strengthen thy labor, and sweeten thy rest."

CHAPTER II.

EARLY STRUGGLES OF EMINENT LAWYERS.

How to get on at the Bar—the Advantages of Poverty questioned—Lord Erskine's debût—a true history—Sir F. Norton—a rising young man of forty-seven—Sir Edmund Saunders—Sir Francis Pemberton—Sir H. Martin—Lord Mansfield—Lord Camden—Lord Kenyon—Lord Thurlow—Mr. Dunning—Lord Eldon—Lord Erskine.

"Parts and Poverty," said Lord Chancellor Talbot, "are the only things needed by the law student." "Pray, my lord," asked a fashionable lady, of Lord Kenyon, "what do you think my son had better do, in order to succeed in the law."—"Let him spend all his money, marry a rich wife, spend all hers, and when he has not got a shilling in the world, let him attack the law." Such was the advice of the old chief justice.

Such sentiments as these it has been the fashion to laud. In themselves they are true, but they are only half-truths—or, perhaps, we should rather say, they are the precise converse of great errors. A wealthy man is less likely to make a good lawyer, than a man who is not rich, just as we are told he is less likely to inherit eternal life. But we read no where in Scripture, that poverty is the road to salva-

tion. An individual who "has every thing handsome about him," on whom fortune has abundantly showered her gifts, and to whom pleasure offers her thousand inducements, is assuredly not the most likely, nay, is just the least likely person, with Sir William Blackstone, to

"—— welcome business, welcome strife,
Welcome the cares, the thorns of life;
The visage wan, the pur-blind sight,
The toil by day, the lamp by night."

So he is the more likely to tread "the primrose path of dalliance," than "the steep and thorny way to heaven."

It may be questioned whether poverty, and the difficulties which so often beset men in their passage through life, have all the beneficial influence which is ascribed to them. The school of adversity as often indurates as softens the affections of mankind. In many minds, instead of producing humility and industry, it produces only disgust and indifference. Again, looking particularly to our profession, it may be doubted whether poverty has not, in many cases, the effect of distracting the attention from professional subjects. When the unfortunate Donald, the author of "Vimonda," was asked how he was getting on with his tragedy, he replied, in a tone of indescribable sorrow, "Talk not to me of my tragedy—I have more tragedy than I can bear at home." With a family reduced almost to starvation, we could hardly expect his mind to have been devoted to his noble subject.

Lord Erskine said that the first time he addressed the court, he was so overcome with confusion, that he was about to sit down. "At that time," he added,

'I fancied I could feel my little children tugging at my gown, so I made an effort—went on, and—succeeded." With a man of less sanguine temperament, the same feeling would have only added to his confusion—the conviction that, upon his success at that time, depended the future welfare of those he loved, would only have aggravated the embarrassment of his novel situation.

About thirty years ago, a young man, a scion of a respectable family, came up to London to prepare himself for the bar. His means were small, but his wants were limited, and well aware that if fortune does not always favor the deserving, she has, for the ignorant and dissolute, no honors or rewards, he applied himself with zeal and industry to the study of his profession. Nature had blessed him with an acute mind—his perseverance was untiring, and he could boast that pleasure never allured him from the paths of duty. He was, in due time, admitted to the honors of the wig and gown, and took his seat on the back benches in the Court of King's Bench. His prospects were, at first, promising—his family connections—the reputation he had acquired, during his pupilage, for attention and industry, obtained for him, earlier than usual, a small practice, and what leads to its increase, a good name. Elated by the prospects which appeared opening before him, he married—and he was yet in the prime of life when he was the father of a large family. Unhappily, his business did not increase in the same ratio with his necessities, and he soon began to feel all the difficulties which attend on small supplies and large demands. His physical strength began to fail him, and all the more, when he saw his admirable wife, whom he loved with

all the ardor of a first affection, devoting herself to the most menial tasks—discharging the humblest offices for him and their children. On her fragile frame, care and sorrow made rapid inroads. A casual attack of illness, aggravated by pecuniary distress, threatened her life, and, ultimately, she died —falling a victim to her anxieties for her husband and family. Heart-broken, the young lawyer still struggled on for the sake of his children. A few months after the partner of his cares was consigned to the grave, he succeeded in some important cause accidentally intrusted to him: business poured in on him; and, in a very short time, he found himself one of the leaders of the bar. When a friend congratulated him on his sudden promotion, he exclaimed—"Had it but come a few months sooner!"

Reader! this is a true story, as many can vouch: the subject of it now occupies a high place amongst our legal functionaries.

Fletcher Norton* toiled through the routine of circuits and Westminster Hall for many years, without a brief. Mr. Bearcroft, one of the most eminent

* With Sir Fletcher Norton, as with many others, "Early Struggles" appeared to have, in some measure, operated injuriously. To them might be ascribed the parsimony and avarice for which he was distinguished in after years, and which obtained for him the elegant appellation of Sir Bullface Doublefee. Lord Orford mentions an instance of his *amor pecuniæ*, which deserves to be extracted. "His mother lived at a mighty shabby house at Preston, which Sir Fletcher began to think not quite suitable to the dignity of one who had the honor of being his parent; he cheapened a better, in which were two pictures, valued at £60. The attorney insisted on having them as fixtures for nothing: the landlord refused—the bargain was broken off—and the dowager madam remains in her original hut."

barristers of the last century, and who died Chief Justice of Chester, underwent the severest difficulties in his passage to wealth and fame. His industry and perseverance were indomitable. For many years his practice was so limited as hardly to suffer him to subsist with the strictest economy. He sometimes, however, thought of relinquishing the law as a profession, but a just estimation of his own acquirements induced him to continue, and he at last made himself known, and obtained an immense practice and a high reputation. It was a long time before the eminent merits of Mr. Holroyd, afterwards a puisne judge in the King's Bench became recognised. Lord Kenyon spoke of him when in his forty-seventh year, as "a rising young man." Sir William Grant travelled many a circuit before he obtained a single brief, and at last owed to the friendship of a minister, what he was entitled to expect from his own merits.

The rise of SIR EDMUND SAUNDERS, one of our soundest lawyers, from the very depths of poverty to the chief justiceship of Common Pleas, is one of the most remarkable circumstances in our legal annals. Saunders was originally, if not a parish foundling, at least, a poor beggar boy, and by constant attendance in Clements Inn, obtained the notice of the attorneys' clerks. Finding he was anxious to learn to write, some benevolent attorney had a sort of mock desk constructed for him at a window on the top of a staircase, where he sat and wrote after copies of court and other hands lent him by the clerks. In this he soon became so expert, that he used to obtain employment as a copier, and made some little money in this way. Some books of forms having been lent

him, he became "an exquisite entering clerk," and then acquired a knowledge of special pleading. He at last obtained some assistance, which enabled him to be called to the bar, and he acquired a practice in the King's Bench equal to any other lawyer of his day. We are sorry to be compelled to add, he was in his habits grossly intemperate—"for, to say nothing of brandy, he was seldom without a pot of ale at his nose or near him. By this means he became corpulent and gross in his habit of body, so much so as to be offensive to the Bench, and every one near him. Sir Matthew Hale appears to have disliked him on account of his ill life, and also on account of his habit of attempting to deceive the court by tricks and subterfuges. To this latter practice he was much addicted, and he appeared to think his zeal for his client justified him in pursuing it. He was witty and good tempered, and was often seen in court before the judge had arrived, surrounded with students, putting cases to them and debating law points with a familiarity that bespoke native goodness of heart. When at the bar, although in enormous practice, he lodged with a tailor, in Butcher's Row, an abode in which he continued after he was raised to the Bench. This elevation he owed to the ability he had manifested when counsel for the crown on several occasions; but it was the cause of his death, from its imposing upon him very severe labors, and the necessity of changing his diet and habits.

A predecessor of Saunders, SIR FRANCIS PEMBERTON, afforded little prospect in his early life of his after eminence. "In his youth," says Burnet, "he mixed with such lewd company, that he quickly

spent all he had; and ran so deep in debt that he was cast into a jail, where he lay many years; but he followed his studies so close in the jail, that he became one of the ablest men in his profession."

SIR HENRY MARTIN, judge of the prerogative and admiralty courts,* in the reign of James I, owed his rise to the narrow circumstances in which the death of his father left him. His father bequeathed him £40 a year; "and he used," Fuller tells us, "merrily to say that if his father had left him four-score, he should never have been a scholar, but lived on his lands: whereas, this being, though a large encouragement, a scant maintenance, he plied his book for a better livelihood."

LORD MANSFIELD, although the son of a Scottish Viscount, is said in the early part of his life to have been involved in the greatest pecuniary difficulties. His extrication from these, it has been reported, he owed to the first Lord Foley. The anecdote which tradition has preserved is this: one day, Murray was lamenting to Foley, that he was compelled by want of means, to forego all the idea of following the law as a profession; and that although his inclination led him another way, he felt he had no resource but taking orders. Lord Foley, affected by this representation, earnestly persuaded him from pursuing such a design, and generously offered him £200 a year, out of the annual allowance of £500, settled on him by his

* In reference to this union of jurisdiction, King James used pleasantly to remark, that Martin was "a mighty monarch, in his jurisdiction over *land* and *sea*, the *living* and the *dead*."

father. Murray accepted the offer: and thus we owe to the friendship and zeal of this generous peer, all the benefits the law of England received from the upright and conscientious magistrate, who so long presided in our chief court of justice.* Shortly after his call, Murray was engaged in several causes in the House of Lords;† but he is said to have owed his ultimate success rather to a fortunate accident, which occured during a trial in which he was retained a few years afterwards. It was the celebrated case of Theophilus Cibber and Sloper: Murray was junior counsel for the defendant. His leader was seized with a fit in court, before the trial came on—the task of the defence devolved therefore wholly upon Murray, who, having obtained postponement of the trial for an hour, in order to prepare himself, addressed the jury with so much effect, as to reduce the damages against his client to a mere nominal amount.

* Murray never forgot the obligations he owed to Lord Foley. He was in the habit, at the time when his business was the most considerable, of visiting Lord Foley, in his house in the country, going down on the Saturday night and returning on the Monday morning. When reproached by a fellow barrister with thus wasting his time with an old peer, who could add nothing to his advantage or amusement—he replied, "it is enough if my visits tend to the entertainment of my fast friends; if I fail in that, I am at least sure to contribute to the repose of my own faculties."

† It is for this reason that his friend Pope apostrophised him in the well-known lines—

"Blest as thou art, with all the power of words,
So known, so honored in the House of Lords."

This charming specimen of "the art of sinking," has been admirably parodied by Colley Cibber—

"Persuasion tips his tongue, whene'er he talks,
And he has chambers in the King's Bench walks."

After this time, he has said, business poured in upon him; and he never knew the difference between an income of a few hundreds a year, and one of many thousands. Murray, however, when he had attained to the honor of the peerage, and the judicial dignities of his latter years, would never ascribe his elevation to the force of his own talents. "My success in life," he said, "was not very remarkable; my father was a man of rank and fashion: early in life, I was introduced into the best company, and my circumstances enabled me to support the character of a man of fortune. To these advantages I chiefly owe my rise." However Lord Mansfield may have chosen to underrate the difficulties which beset him in his early life, it is well known that these difficulties were inconsiderable neither in number nor degree; and although he might have been enabled to support the appearance of a man of fortune, in reality he was far removed from that condition. It is a matter of notoriety, that when he first offered his hand to Lady Elizabeth Finch, daughter of the Earl of Winchelsea, his advances were most peremptorily rejected, on the score of his want of means.*

It will, perhaps, excite surprise in the minds of some of our readers, who are aware that his father was Chief Justice of the King's Bench, to see the name of Lord CAMDEN in this place. But despite his strong family connections, it was through disheartening dif-

* It is to this mortifying rejection, that Pope refers, in his imitation of Horace, Book iv, Ode 1.

"Shall one whom nature, learning, birth conspired
To form, not to admire, but be admired,
Sigh, while his Chloe, blind to wit and worth,
Weds the rich dulness of some son of earth?"

ficulties, that this great man had to struggle to the eminence which he afterwards attained. For many years did he endure the evils which attend on an empty bag and empty pocket. Three years after he was called, he thus writes: "Alas! my horse is lamer than ever; no sooner cured of one shoulder than the other began to halt. My hopes in horse-flesh ruin me, and keep me so poor, that I have scarce money enough to bear me out in a summer's ramble; yet ramble I must, if I starve to pay for it." His friend Sneyd Davis addressed to the desparing young lawyer a poetical epistle, in which he set before him the examples of Somers, Cowper, Talbot, and Yorke, who, overcoming every obstacle,

"Sped their bright way to glory's chair supreme,
And worthily filled it. Let not these great names
Damp but incite; nor Murray's praise obscure
Thy younger merit; for their lights, ere yet
To noonday lustre kindled, had their dawn.
Proceed familiar to the gate of fame,
Nor deem the task severe, its price too high,
Of toil and honor, for a father's son."

This poetical appeal, however, it cannot be expected afforded Pratt* any consolation for his lack of

* After Lord Camden became Chief Justice of the Common Pleas, he wrote thus to his friend Davis:—"I remember you prophesied formerly that I should be a Chief Justice, or, perhaps, something higher. Half is come to pass; I am Thane of Cawdor; but the greater, is behind; and if that fails me, you are still a false prophet. Joking aside, I am retired out of this bustling world, to a place of sufficient profit, ease, and dignity; and believe me that I am a much happier man than the highest post in the law could have made me."

briefs. It is reported, that almost broken-hearted, he came to the resolve, that after having for eight or nine years battled with the storms of fate, to resign all hopes of success at the bar, to retire to his college (of which he was a fellow), and qualify himself for taking holy orders, being well assured of obtaining a college living in the course of a few years. A short time before the circuit he declared his intention to his friend Henly (afterwards Lord Chancellor Northington), who endeavored first to laugh, and then to reason him, out of his resolution; but finding neither course succeed, he managed to get Pratt retained as junior counsel to himself in a cause of great weight, and then absenting himself—either being or pretending to be, seriously ill—*the lead* fell to the share of Pratt, who displayed his learning and talents with such eminent success, as at once to obtain a practice and reputation commensurate to his industry and abilities.

Lord Kenyon is another instance, showing how little want of connection, or what are called expectancies, obstructs the career of the steady and persevering lawyer. Like his friend Dunning, he commenced his legal education in the office of an attorney, with whom it was originally intended that he should have become partner. Some difference, however, as to terms, broke off the negotiation. When a clerk, it is said, he was much annoyed at being constantly solicited by the wife of his master, to discharge duties usually considered as pertaining rather to the office of a menial. Once this lady addressed him with—"Pray, Mr. Kenyon, as you are going out, will you be kind enough to call at the green-grocer's, and order

me a cauliflower; or, stay, perhaps, you would have no objection to bring it home with you?" Kenyon bowed, and at his return informed the worthy dame he had performed her commands, and that he had paid sixpence for the vegetable, and eighteen pence for a chair to bring it home. This was the last time he was ever subjected to such improper treatment. His employer appears to have exhibited all the parsimony that his pupil displayed in after years. When his cook informed him that there was not dinner enough provided, upon one occasion when *company* were expected, he asked if she had *brothed* the clerks. She replied that she had done so. "Well then," said he, "broth 'em again."

Kenyon, finding it impossible to induce his master to abate his terms for admitting him into partnership, resolved to relinquish his profession, and attempt the bar. This he did, and in 1754 entered himself on the books of Lincoln's Inn. Dark and dismal indeed were his prospects—long and arduous the strugglessby which he could acquire even a competence. He did not possess that kind of dazzling talent, which would, if opportunity were afforded, at once make him known. He did not, like Dunning or Erskine, possess the eloquence of the orator, which directly it was manifested, would give him a reputation that industry alone was wanted to improve. The only qualities that he possessed were, however, valuable, calculated to increase rather than to confer notoriety—steady perseverance, untiring industry, indomitable determination. With laborious efforts, step by step, he rose from obscurity to honor; from the desk of a country attorney's office, to the presidency of the first court of justice in the kingdom.

When he was a student, Kenyon was very intimate with Dunning and Horne Tooke, both of whom were then keeping their terms.* The trio used generally to dine together in vacation, at a mean little eating-house near Chancery-lane. The splendor of their fare might be imagined from the fact, that it cost them sevenpence-halfpenny each. "As to Dunning and myself," Tooke would say, "we were generous, for we gave the girl who waited a penny a piece, but Kenyon who always knew the value of money, sometimes rewarded her with a halfpenny, and sometimes with a promise." When he was called to the bar, his prospects did not improve. He was doomed to sit, term after term, on the back benches, unknown, and with scarcely any chance of success. The spirits of almost any other man would have broken down under circumstances so discouraging. But Kenyon was made of sterner stuff. He fagged on with courage—increasing his knowledge of the law, by taking copious notes of the decisions of the bench when in court, and incessantly reading the text books and reports when in chambers. At length he became gradually known as a pains-taking, working counsel, who might be safely depended on, in cases where industry and patience were particularly required. A reputation of

* Dunning and Kenyon continued good friends through life, although the gaiety and wit of the former induced him sometimes seriously to annoy the more sober Welshman. Kenyon once asked Dunning to frank a letter to a relation in North Wales. Dunning wrote the direction correctly, adding, after North Wales, "Near Chester." Kenyon, enraged, threw down the letter, and exclaimed, "Take your frank, Mr. Dunning: I will accept no more from you." Dunning got between him and the door, and managed, by apologies and entreaties, to pacify his friend.

this kind was the foundation of his fortune. He made no sudden *hit*—acquired no unexpected triumph—but by study and unceasing labor, he proved (and we commend the lesson to all placed in similar circumstances,) that whoever does justice to the law, to him in the end will the law do justice.

Few have had greater difficulties to struggle with in early life than LORD THURLOW. His father* was the incumbent of a small parish in Suffolk, and used to say that he could give his children nothing but a good education, and that Ned (meaning the future chancellor) would have to fight his own way in the world. And this indeed was his lot, and well and manfully did he meet it. For some years after he was called to the bar, he was wholly unknown as a lawyer. So slender were his means, that while travelling the circuit, he was compelled to resort to the most extraordinary expedients in order to defray his expenses. He once found himself utterly destitute of money, and his usual resources wholly unavailable. How to defray the expenses of reaching the next assize town, for a time baffled his ingenuity. At length he hit upon a scheme. He sent for a stable-keeper, and told him he wanted a good horse, and

* When Lord Chancellor, some obsequious friend said that as Thurlow, the celebrated secretary, was of a Suffolk family, probably Thurlow himself was related to him. "No, sir," replied the chancellor, "in that county there were two families of the same name: from one sprung Thurloe, the statesman, from the other Thurlow the carrier, I am descended from the last." When Lord Thurlow's patent of peerage was being registered, the herald inquired the name of his lordship's mother. "I don't know," vociferated the chancellor in a tone of thunder.

asked him if he had one to sell. The stable-keeper assured him that he had one which he could confidently recommend. Thurlow then consented to take his horse on trial, and if he approved of it, to purchase it at a certain price. The horse was sent the next morning according to appointment. Thurlow used him for the purpose desired, and then returned him to the owner, with a threat of bringing an action against him for venturing to set a gentleman on such a beast whose faults rendered him fit for nothing but hounds' food!

The first cause of any importance in which he was engaged, was that of Robinson *v.* the Earl of Winchelsea. He had the fate to be opposed to Sir Fletcher Norton, whose rough and overbearing manner was the terror of all the juniors. But in Thurlow Sir Fletcher met his match; and when he adventured some of his accustomed bearishness, received from the young advocate a retort, so spirited and severe, that it won for Thurlow the applause of all who heard it.

His ultimate rise, however, was owing to another circumstance. Thurlow was remarkable, when a student, for the extraordinary manner in which he disposed of his time. Giving up his nights to unremitting study, the hours of daylight he spent in the coffee-houses, amidst wits and rakes, the very idlest of the idle. When at the bar he seemed to have still frequented these places of entertainment; though, perhaps, not to the same extent as before. Indeed, they were the usual resorts of barristers, when not occupied in their professional avocations. One evening, at Nando's, a favorite coffee-house near Temple-bar, where several of the same profession were assembled, the conversation turned upon the famous

Douglas case, which was then about to become the subject of legal proceedings. Several of the counsel engaged were present; some one of whom observed, that it was a great pity as yet no barrister should have been found, who was willing to go through, and methodise the immense mass of evidence, which was necessary to be done before the briefs could be prepared, and which required such abilities and knowledge of law, that it was wholly useless to entrust it to the care of an attorney. Some remark that was made by Thurlow induced an observation, "that, perhaps, he was willing to undertake the onerous task;" and the result was that it was confided to him. So great were the abilities that he displayed in discharging the duties which so unexpectedly devolved on him, that he was intrusted with a brief in the cause itself. During the time he was arranging the evidence for the plaintiff, Thurlow was constantly brought into immediate contact with some of the most distinguished persons in the country, and amongst them with the high-spirited Duchess of Queensberry, so well known as the friend of Pope, and patroness of Gay. Thurlow managed so effectually to ingratiate himself with the duchess, as to induce her to exert her influence to obtain him a silk gown. This, after repeated importunities, and many refusals, she succeeded in obtaining from Lord Bute; and Thurlow, in addressing the House of Lords in the Douglas case, did so as a king's counsel, although almost unknown at the bar. His success on this occasion exceeded even his own expectations, and seemed to promise a realisation of all his fondest hopes. But he was doomed to meet with further mortifications. His business in the King's Bench,

which soon became considerable, received a severe shock from Lord Mansfield's anxiety to pay his court to Sir Fletcher Norton, who was not only hated by the bar, but dreaded by the bench. Upon one occasion, Thurlow was arguing against the execution of a power in a marriage settlement. He took three objections to the execution, and having argued the first two at great length, closed with observing, that he should not trouble the court with entering fully into the third objection, believing the case to be quite clear on the first two. When, some days afterwards, Lord Mansfield delivered the judgment of the court, he did so in these words: "Mr. Thurlow, we decide that the power was not duly executed; but not on either of the reasons which you have urged, but on that which you have abandoned." This speech, so discreditable to the judge, proved very injurious to the advocate; and for some time he was seen, though a king's counsel, with a light bag.

Mr. Dunning may be cited as another instance of the truth, that genius and industry will overcome the most unpromising circumstances. The son of a Devonshire attorney, in a day when attorneys occupied a very different position in society to that which they do now, he came to London with none of those introductions which obtain for native talents, the opportunity of becoming known, and none of those connections which give to moderate abilities a chance of success. The following tradition has been preserved in Devonshire respecting the circumstances that led to his going to the bar. In the first instance he was intended to succeed his father in his business, and was, in order to prepare himself for this occupa-

tion, sometime a clerk in his office. It is said that a nobleman, returning from a foreign embassy, landed at Plymouth or Falmouth, and being in bad health, was transmitted to London by easy stages. He stopped at an inn at Ashburton (Dunning's native place) intending to remain the night there. Finding himself lonely, he inquired whether there was any man of education in the town, whose society would relieve the tedium of a solitary afternoon. The clergyman of the parish was first named, but he was absent from home; the medical man was equally unfortunate; application was then made to the lawyer, Mr. Dunning (the elder), but he was from home; his son, however, fancying that the invalid might require professional assistance, proceeded to the inn to tender his services, and was invited to spend the evening with the stranger. So much was the nobleman struck with the talent and quickness he manifested in conversation, that he strongly advised him to turn his attention to the bar. This Dunning did, it is said, with some difficulty, in consequence of his father's desire that he should follow his original profession.—The nobleman already mentioned is supposed to have been Henry Earl of Shelburne, who died in 1751.

During his studentship, Dunning encountered all those difficulties which beset men, who strive with slender means to succeed in an expensive profession. His father allowed him, while he was a student, and for a few years after he was called to the bar, a hundred a-year. He lived in Pump-court, up two pair of stairs. He is said to have studied so hard, that he made a rule of never leaving his chambers during the day—devoting himself to his books from an early hour in the morning until late in the evening, when

he went to the Grecian or George's Coffee-house. There assembled the wits of the day, whom he charmed with his witty sallies and extensive information; while, to economise his time, he partook of dinner and supper in one meal. His difficulties did not cease when he was called. For the three first years his fees did not amount to a hundred guineas. The receipts of the fourth year exceeded a thousand; and he is said to have made from eight to ten thousand a-year during the last twelve years he was at the bar. The first thing that brought him into notice was a memorial that he prepared respecting a quarrel between the English and the Dutch in India, in the year 1764. This produced the desirable consequence of reparation on the part of their High Mightinesses. So highly did the East India Company estimate the service that he thus rendered them, that they presented him with five hundred pounds, as a token of their gratitude. From this time, business flowed in on him, and his connection and influence daily enlarged. Although he was no older than fifty-two when he died, Dunning left behind him a fortune of £150,000. He used to live at a very expensive rate; in such a way, in fact, as shocked his mother, whose notions of high life were rather confined, and who could never believe that "her son John" could possibly pay for half the luxuries she saw on his table. One day when she was on a visit to him, he gave a grand entertainment in her honor, at his house at Fulham. The poor old lady was astonished at the splendid appearance of the table, loaded with all the delicacies which that season could afford. During the whole time of dinner she did not speak a word. At the first opportunity, after the repast was over, she sent for her

son. "John," said she, "I shall not stop another day to witness your shameful extravagance." "My dear mother," returned Dunning, "you ought to consider that I can well afford it. My income, you know —." "No income," replied the old woman, "can stand against such scandalous prodigality. The sum which your cook told me that very turbot cost, ought to be enough to support any reasonable family for a whole week." "Pooh! pooh! my dear mother, you would not have me appear shabby. Besides, what is a turbot after all? "Pooh! pooh!" re-echoed his mother; "don't *pooh me*, John. I tell you that such goings on can come to no good, and you will see the end of it before long. However, it sha'n't be said that your mother encouraged such waste; for I mean to set off in the coach for Devonshire to-morrow morning." And, despite her son's entreaties, the old lady kept her word.

Lord Eldon, whose name occupies a prominent place in another portion of our work, must not be passed over here. Mr. Bentham says, "that Mr. Scott waited the exact number of years it cost to take Troy, and had formed his determination to pine no longer, when Providence sent an angel, in the shape of Mr. Barker, with the papers of a fat suit, and a retaining fee. He became an old clerk, was a favorite at court, and had his entrées. Without an extra stock of powder in his hair, never durst the plenipotentiary approach the royal presence." There is much exaggeration in this statement. It is well known that Scott, when only twenty years of age, eloped* with a

* We have the following anecdote from a source that we can

daughter of a wealthy Newcastle Banker. "Jack Scott has run off with Betty Surtees," was the exclamation of the future chancellor's old schoolmaster; "the poor lad is undone." "I suppose," said William Scott, afterwards Lord Stowell, to an Oxford friend, "you have heard of this very foolish act of my very foolish brother." "I hope," replied his friend, "that it will turn out better than you anticipate." "Never, Sir," replied Mr. Scott, "he is completely ruined; nor can any thing now save him from absolute beggary. You do not know," he continued, "how very unhappy this makes me; for I had good hopes of him, till this last confounded step has destroyed all."

It has often been said that, after his marriage, his father-in-law refused all intercourse with him, until he had acquired fame and wealth, and then made some overtures which Scott rejected. When Chancellor, he is said to have affixed the great seal to a commission of bankruptcy against his father-in-law. But these circumstances are not true.

rely on. George III was one day standing between Lord Eldon and the Archbishop of Canterbury, Dr. Sutton. After a moment's pause in the conversation, the king said, gravely, "I am now in a position which, probably, no European king ever occupied before." Lord Eldon begged his Majesty to explain himself. "I am standing," said the king, in the same grave tone, "between the head of the Church, and the head of the Law, in my kingdom—men, who ought to be the patterns of morality, but who have both been guilty of the greatest immorality." The two lords—Learned and Reverend—looked shocked and astonished. Lord Eldon respectfully begged to know to what his Majesty alluded. "Why, my lords," exclaimed the king, in a tone of exquisite banter—"did you not both run away with your wives?"

A few days after her marriage, Mrs. Scott received, by her youngest brother, a letter of forgiveness, on which, accompanied by her husband, she returned to her father's, where the young couple staid for some months. It has been reported, that during his sojourn in Newcastle, a very respectable and wealthy tradesman, a grocer, who had known his father and family for many years, called on Scott, and proposed, as he himself had no children, that he should become a partner in his business. Mr. Scott is said to have paused on this offer, and to have told the worthy grocer that he had written to his brother at Oxford, respecting his plans—that he expected an answer the next day and that, according to the advice it should contain, would his future course be shaped. The next day the letter arrived, and, as it conveyed an invitation to return to Oxford, determined him to decline the generous offer of the friendly grocer. Scott, accompanied by his wife, then went to Oxford, where he resided until his call to the bar, studying law with the utmost severity. After his call, he spent two years in the chambers of Mr. Duane, an eminent conveyancer, by which means he acquired a most intimate acquaintance with the principles and practice of the Law of Real Property—an acquaintance which an observant reader will detect in many of his judgments, after he was placed on the woolsack. The fruits of his first year's practice were not large—amounting to one solitary half guinea, which he generously presented to his wife as pocket-money. His father-in-law obtained for him a general retainer from the corporation of Newcastle, and several fees from some of its wealthy merchants.

Scott, about this time, was also made one of the

commissioners of bankrupts; beside which, he obtained the professional business of the Duke of Northumberland. From 1774—one year after he commenced practice—to 1783, his business, at first gradually, and afterwards rapidly increased. About four years after his call, Scott appeared to have been impatient of the tardiness of his progress; and, apprehensive that the difficulties imposed on him, as the father of a family, would increase, resolved to abandon the London bar, and return to Newcastle. There were two circumstances that prevented him from carrying this resolution into effect. The first was his success in the great case of Ackroyd *v.* Smithson, (1 Brown. Chan. Ca. 505,) which was originally heard before the Master of the Rolls. Scott had a guinea brief to consent on behalf of one of the parties—another of the parties, however, would not yield, and appealed from the Master to the Chancellor. The solicitor of Mr. Scott's client, called on him with another guinea consent brief: but Mr. Scott said that now he had heard the matter argued, he was disposed to think that a good deal might be said on his client's behalf, and therefore, he thought he should be imprudent to consent. The solicitor replied, that he had no other instructions but to consent; but he would mention the matter to his client. The result was, that Mr. Scott was instructed to take what course he thought proper. When the day for the cause arrived, the other parties urged their claims with such apparent reason, that Lord Thurlow inquired what the opposite side had to observe. On this, Scott rose and advocated the cause of his client, with such learning and ability, that Lord Thurlow said he had been so much startled with the novelty and force of his reasoning, that he

must take time to consider; and ultimately decided, with many compliments to Mr. Scott, in his favor.

In the spring of the same year, some engagement preventing Mr. Cowper appearing before a committee of the House of Commons, and Mr. G. Hardinge refusing to lead in a case, in which he had been retained as junior, the solicitor for the petition hastened to Carey Street, to offer the vacant brief to Mr. Scott. When he arrived, he found that Scott had retired to rest: he desired him to be aroused, and when he came down, told him his business. After a moment's consideration, Scott told the solicitor that at so short a notice it would be impossible for him to argue the case; but that all he could do would be to state the facts to the committee, and to entreat them for a short indulgence, while he made himself master of the law. The solicitor acquiesced in this proposal; and next morning accordingly, Scott appeared before the committee, and opened the case with the greatest perspicuity, and then requested the indulgence of a few hours, which was immediately granted him. Passing from this committee into Westminster hall, he was accosted by Mr. Mansfield, then a leader in the courts. "Mr. Scott," said he, "I hear you are about to leave us. Let me advise you not to be too hasty. Try London another year." Flattered by this advice, which was repeated by Mr. Wilson, another great leader, whom he met with in the hall, in deference to their opinions the young lawyer abandoned his intention, and in the course of the next year had plenty of business.

The following anecdote has also been related of one of Mr. Scott's early "happy hits." At York, the judges often left remanets. Mr. Scott was junior in an action of assault, and when the cause was called

on, he rose to say that his leader was engaged in the crown court, and to express his hope that the court would postpone the cause for a short time. "Call the next cause," exclaimed the judge in a tone, which implied, "strike this out of the list." Mr. Scott immediately—it was a case of desperation—addressed the jury:—a Mrs. Fermor, and an elderly maiden lady, Miss Sanstern, were opposed to each other, at a whist table, and had a slight difference. Words led to blows, and Mrs. Fermor was forced from her chair to the floor. The evidence appeared conclusive that Miss Sanstern committed the first assault; but the defendant's counsel objected that there was a fatal variance between the declaration and the proof, the declaration alleging that the assault had been committed by the hand of the defendant; the proof being that she had flung her card into the plaintiff's face. Mr. Scott replied, that "In the common parlance of the card-table, a hand means cards. She did assault the plaintiff with her hand of cards." Lord Eldon's recollection of the story, was, that he gained a verdict for a small amount. The year after his success in Ackroyd *v.* Smithson, Eldon refused a mastership in chancery—in three years received a silk gown—and led the northern circuit.

The circumstances of Lord Erskine's early life unquestionably entitle him to a place here. Born, like Lord Mansfield, of a noble Scottish family, he was exposed to still greater disadvantages. He went to sea at the age of fourteen, and obtained the temporary rank of lieutenant; but finding that his chances of promotion were slight and remote, he afterwards entered the army. He accompanied his regiment to

Minorca where he continued for three years. He is, said to have selected the military profession, not from any martial predilections, but simply because the circumstances of his family, precluded the possibility of his adopting any of the learned professions. Ultimately, however, after a period of six years' service he determined to try his chance at the bar; to which, after obtaining a nobleman's degree at Cambridge, he was called in due season. This step, it has been said, he was induced to take by the importunities of his mother, who, herself an accomplished and highly educated woman, detected the latent talents of her illustrious son. While in the army, Erskine married a beautiful and intelligent young lady, who is said to have borne the hardships of her lot with a constancy and courage which proved how warmly she was attached to her husband.

His own account of the circumstance to which he owed his celebrity at the English bar, is too well told not to be given at length. He says,

"I had scarcely a shilling in my pocket when I got my first retainer. It was sent me by a Captain Baillie of the navy, who held an office at the Board of Greenwich Hospital; and I was to show cause in the Michaelmas term against a rule that had been obtained against him, in the preceding term, calling on him to show cause why a criminal information for a libel, reflecting on Lord Sandwich's conduct, as governor of that charity, should not be filed against him. I had met, during the long vacation, this Captain Baillie at a friend's table; and after dinner expressed myself with some warmth, probably with some eloquence, on the corruption of Lord Sandwich, as First Lord of the Admiralty; and then adverted to

the scandalous practices imputed to him, with regard to Greenwich Hospital. Baillie knudged the person who sat next to him, and asked who I was? Being told that I had been just called to the bar, and had been formerly in the navy, Baillie exclaimed, 'Then, by G—! I'll have him for one of my counsel.' I trudged down to Westminster Hall, when I got the brief; and being the junior of five who would be heard before me, never dreamt that the court would hear me at all. The argument came on. Dunning, Bearcroft, Wallace, Bower, Hargrave, were all heard at considerable length, and I was to follow. Hargrave was long-winded and tired the court. It was a bad omen. But as my good fortune would have it, he was afflicted with the stranguary, and was obliged to retire once or twice in the course of his argument. This protracted the cause so long, that when he had finished, Lord Mansfield said that the remaining counsel should be heard next morning. This was exactly what I wished. I had the whole night to arrange in my chambers what I had to say the next morning; and I took the court with their faculties awake and freshened, succeeded quite to my own satisfaction, (sometimes the surest proof that you have satisfied others,) and as I marched along the hall, after the rising of the judges, the attorneys flocked round me with their retainers. I have since flourished; but I have always blessed God for the providential stranguary of poor Hargrave!"

The annals of English advocacy do not record a triumph more sudden, or better earned. Lord Mansfield frequently checked the young speaker when, wandering from the immediate matter at issue, he hurled the weapons of his eloquence at Lord Sand-

wich himself. "Lord Sandwich is not before the court," observed the chief justice, in a tone of grave reproof. "Not before the court! Then, my lord, I will *drag him* before the court," replied the intrepid advocate. It has been reported, that when he left the court, he had thirty briefs pressed on him by admiring attorneys, who had witnessed his brilliant display.

When his business, though increasing, was small, somebody met him in Westminster Hall, and congratulated him on his good looks and apparent flow of spirits. "Why," said he "I ought to look well; for I have nothing to do but to grow, as Lord Abercorn says of his trees."

"Neither God nor man," says Bishop Shipley, "will consent that true honor and credit shall be obtained by any other expedients than wisdom and integrity."

CHAPTER III.

LEGAL ECCENTRICITY.

Legal Eccentricity compared with Medical Eccentricity—Mr. Serjt. Prime—Mr. Serjt. Whitaker—Mr. Serjt. Hill—Lord Chief Justice Willes—Lord Chancellor. Northington—Lord Chancellor Thurlow—An Eminent Conveyancer.

THE lawyer has not the opportunity, possessed by the medical man, of displaying the eccentricity of his character. With his clients he is rarely brought in contact, and in court, his duties are of that precise and defined character, which afford but little scope for the manifestation of any peculiarities which may distinguish his temper or disposition.

At the bed-side of his patient, or in consultation with his friends—in short, in the every-day practice of the profession, the surgeon and the physician is constantly exposed to situations in which his personal character and all its qualities, necessarily discover themselves. The medical man again, enjoys, from the circumstances of his pursuits, a wider and more intimate intercourse with society; he is looked on as the friend and counsellor of many to whom he was in the first instance recommended by his professional talents, but who have learnt to repose so much confidence in his character, as to advise with him on their

own private affairs, or those of their relations. From these circumstances, greater information as to the personal character of our eminent medical men has been acquired, than the nature of their pursuits could ever enable us to obtain respecting our celebrated lawyers.

The lawyer, however, unlike the medical man, has nothing to gain in assuming eccentricity. Rough, uncourtly, and disagreeable manners, have never been considered a way of "getting on at the bar;" although, as is well known, not a few of the eminent medical practitioners, in either branch of the profession, have derived both fame and profit from insulting every patient whom fortune has thrown in their way. "He is such a rude man, he *must* be vastly clever"—is a reflection which not uncommonly suggests itself to the minds of the valetudinarians; and hence, the large fortunes which men, whose ferocity of manners has rendered them unworthy of civilised society, have so often acquired. The eccentricities of our lawyers have, therefore, been natural to them, and have, for the most part, arisen from the abstruse nature of the subjects with which their minds have been conversant, rendering them ignorant or neglectful of the customs of the world, whether as respects conduct, opinions, or manners.

In the list of our eccentric lawyers will be found some, whose high merits would entitle them to notice elsewhere, but we have preferred considering them here, because they serve to illustrate a point in the legal character to which sufficient attention has not, we think, been hitherto paid.

We commence with SERJEANT PRIME, who was a good-natured, but rather dull man, and, as an advo-

cate, wearisome beyond comparison. He was retained on one occasion to argue an ejectment case on circuit. The day was intensely hot, and, as the case excited great interest, the court was crammed full. Prime made a three hours' speech, whose soporific influence aided by the atmosphere of the court, was most potent. A boy, early in the proceedings, who was anxious to see all that was to be seen, managed to clamber up to the roof of the court, and seated himself on a transverse beam, over the heads of the spectators. The heat, and the serjeant's dullness, soon overcame him; he fell fast asleep, and, losing his balance, came tumbling down among the people below. He fortunately escaped with only a few bruises; but several persons in the court were severely hurt. For this offence the serjeant was tried at the circuit table, found guilty, and sentenced to pay three dozen of wine towards the mess, which he did with the greatest possible good-humor. A counsel once getting up to reply to one of his lengthy orations, which had made the jury very drowsy, began, "Gentlemen, after the long speech of the learned serjeant—" "Sir, I beg your pardon," interrupted Mr. Justice Nares; "you might say, after the long *soliloquy*, for my brother Prime has been talking an hour to himself!" Of the learned serjeant the following anecdote has been recorded. At the time when making a new serjeant was considered an important event, part of the ceremony was a procession, which set out from the temple westward, up Surrey Street in the Strand, and then, turning eastward, went up Chancery Lane, to Serjeant's Inn, where those already of the rank of serjeants were assembled in their hall to receive the new serjeant; and, on his approach, the intimation was given, "I spy a

brother." When Prime was called to the rank of serjeant, some one recollecting that his crest was an owl, with the intention of turning the new brother of the coif into ridicule, got a figure of an owl placed at the first floor window of a house in the Strand, directly facing Surrey Street, with a label round his neck, on which was written, in large characters, "I spy a brother."

The circumstances which induced Serjeant Prime to withdraw from the profession have been thus related by Lord Chancellor Thurlow. "I drove Serjeant Prime from the bar, without intending it. I happened to be walking up and down Westminster Hall with him while Dr. Florence Henzey was on his trial in the King's Bench for high treason. Serjeant Prime was at that time the king's prime serjeant; and, as such had precedence over all lawyers in the king's service. But the ministers of that day wishing to pay court to Sir Fletcher Norton, though he had at that time no other rank than king's counsel, they, therefore, intrusted the trial to him. I happened to make this remark to Serjeant Prime—'It is a little singular, Sir, that I should be walking up and down Westminster Hall with the king's prime serjeant while a trial at bar for high treason is going on in that court:' the expression struck him: he felt the affront put on him: he went the next morning, resigned his office, and retired from the profession." The following circumstance, it is believed, happened to the learned serjeant. He had a remarkably long nose, and being one day out riding, was flung from his horse, and fell upon his face, in the middle of the road. A countryman, who saw the occurrence, ran hastily up, raised the serjeant from the dirt, and asked him whether he was

much hurt. The serjeant replied in the negative. "I zee, zur," said the rustic, grinning, "yer *ploughshare* saved ye!"

Serjeant Whitaker was one of the most eminent lawyers of his day. Few memorials of him have been preserved, and these are of a character which serve rather to exhibit him in the light of a humorous than of a learned man, which he undoubtedly was. One day, on a journey to Oxford, in company with Mr. Murphy, his carriage was stopped in the lane of a country village by a waggon delivering fat and offal to a tallow chandler. While he fretted at this delay, a horseman came up to the side of the chaise, who was most remarkable for his thinness, and began teasing the serjeant with an account of the number of miles he had ridden that day, and the still greater number he had to go before night. Whitaker heard him for some time with a subdued temper; at last, breaking out, he exclaimed, "And what mighty matter is all this, sir, considering that you have just sent your *insides* before you, and have now nothing to carry but the *case?*" Two ladies, of rank and fashion, were once praising Mr. Sergeant Walker's dancing. Whitaker who knew that his brother-*in-law* was remarkable for any thing except grace, insisted that their ladyships were mistaken as to the individual. When they declared that they were not, he begged leave to put one question to them—"Pray, ladies, was it upon his hind legs or his fore legs that Serjeant Walker moved so gracefully?"

During an examination which he conducted at the bar of the House of Lords, he put a question to the witness, as to the legality of which some objection

was taken. Counsel were ordered to withdraw, and a debate of two hours ensued respecting the propriety of the question; but nothing was resolved on. When he was re-admitted, Whitaker was desired to put the question over again; but he merely replied,—"Upon my word, my lords, it is so long since I first put the question, that I entirely forget it; but, with your leave, I'll now put another."

Being on the Norfolk circuit, a friend, at one of the assize towns, offered him a bed. The next morning the lady of the house asked him how he had slept; and hoped that "he had found himself comfortable and warm." "Yes, madam," replied the serjeant; "yes, pretty well on the whole. At first, to be sure, I felt a little queer for want of Mrs. Whitaker; but, recollecting that my portmanteau lay in the room, I threw it behind my back, and it did every bit as well!"

Far more eminent than either of these worthies was the well known MR. SERJEANT HILL, who was not only one of the most eccentric, but also one of the most learned, of our lawyers. His eccentricity was not, as is too often the case, the cloak for selfishness and ill-nature—it was natural to his character, and arose simply from his habits of abstraction, rendering him perfectly insensible to all the objects around him.

He married Miss Medlycott, of Cottingham, in Northamptonshire, a great heiress. On the morning of the day appointed for the wedding, the serjeant went down to his chambers as usual, and becoming immersed in business, forgot entirely the *engagement* he had formed for that morning. The bride waited

for him so long, that it was feared the canonical hour would elapse before his arrival. A messenger was accordingly despatched to request his immediate attendance. He obeyed the summons, and, having become a husband, returned again to business. About dinner time his clerk suspecting that he had forgotten entirely the proceedings of the morning, ventured to recall them to his recollection: fortunately the serjeant had, at that moment, discovered the case for which he had been hunting, and he returned to his house to spend the evening in a gayer circle.

By an Act of Parliament, Miss Medlycott was empowered to use her maiden name after her marriage, but the serjeant did not like her exercising this right. He would not allow her to sign her name otherwise than "Elizabeth Hill," except on important occasions; always observing, if she made any objection— "my name is Hill, and my father's name was Hill, and a very good name is Hill, too!" He survived his wife. After her death, a friend called on him to condole with him on her loss. He found the serjeant sitting, looking very sad and disconsolate. At last he said—"So, poor woman, you find she is gone."— "Yes, sir, I merely called upon you to condole with you upon the melancholy occasion." "Ay, she is gone! a very good woman; a great loss to me, certainly, sir. But I'll tell you one thing Mr. ——, if I should ever be induced to take another wife, I would not marry *merely for money.*" The serjeant was remarkable for the polite attention with which he treated his wife during her life-time. Once, being engaged in an important case at Leicester, finding that its trial would probably extend far into the night, he desired his clerk, in a loud voice—so that the mes-

sage was heard by all in court, "to offer his compliments to Mrs. Hill, and to express his great regret that he should not be able to sleep with her that night, as he expected to be detained until very late." His wife is said to have been excessively fond of him, although tradition has recorded that she would not suffer him to leave his house in Bedford Square, in the morning, by the hall door, lest he should soil the steps, which had just been washed. The learned serjeant, to gratify her, would make his exit by the kitchen steps.

He has been known to argue a case for several hours without the slightest attempt at either eloquence or humor. Still his profound learning, and immense (if we may manufacture the word) *case-knowledge*, always made his arguments interesting and important. He acquired the soubriquet of "Serjeant Labyrinth," for he would often stand up in court, as immovable as a statue, with his eyes fixed on vacancy, arguing his client's case, and so wrapt up in his argument as to be insensible to every thing else. Once, in the midst of his argument, which was so frequently perplexed with parentheses as to excite the laughter of the court, Lord Mansfield interrupted him, with "Mr. Serjeant, Mr. Serjeant." The serjeant was rather deaf, and the words were repeated without effect. At length the counsel sitting beside him, told him that Lord Mansfield spoke to him. This drew his attention to the bench, and Lord Mansfield, in his blandest tones addressed him, "Mr. Serjeant, the court hopes your cold is better." "All this was done," says Mr. Hawkins, who relates the anecdote, "in a tone and manner which showed that he wished to make the object of this apparent civility, in fact, an object of

ridicule." Another anecdote exhibits Serjeant Hill's wonted absence of mind. He once argued a point of law for some time at *nisi prius;* he put his hand into his bag, and drawing forth a plated candlestick, gravely presented it to the court. Some one, it appeared, had substituted a "travellers' bag" for that of the serjeant's, whence the mistake; which, it should be observed, he was the last man present to detect.

Mr. Cradock mentions his having been in the habit of meeting the Serjeant and Counsellor Newnham, at Leicester, both of whom were mirthful, and usually afforded great amusement to all present. Newnham was more successful even than Lord Mansfield, in "showing off" the worthy serjeant; but, in the conflict of wit, often himself received damage. So delighted once was Hill with a victory which he obtained over his opponent at a party, at the house of the under-sheriff of Northamptonshire, that, when he retired, he by mistake, gave a shilling to his excellent host, and to the amazement of the company, shook hands in the most hearty manner with the servant. In one of the serjeant's abstracted moods, he had forgotten to button up the front of his breeches. This was observed by some counsel near him during an argument of some very abstruse point of black letter, in which he was engaged, who whispered to him "your breeches are unbuttoned." The serjeant thinking it some hint connected with the cause, adopted it without consideration, and, in unaltered tone of voice, exclaimed, "My Lords, the plaintiff's breeches were unbuttoned." Nor was he aware of the inappropriateness of the introduction, until informed by the same person of the hint having reference to his own breeches, and not to the plaintiff's.

One time, while at his country seat in Northamptonshire, he was occupied in reading an old case, respecting the destruction of noxious animals. During the time he was so engaged, he was disturbed by the cry of the hounds belonging to the Pytchley Hunt. The fox took refuge in his shrubbery, which, when the serjeant perceived, he immediately desired his servants to kill it, and request the master of the hunt to walk in and read the report of the case before him!

We have here recorded a few traits of the character of Serjeant Hill. We should add that he was, in the domestic relations of life, amiable, and accordingly beloved. His uprightness and integrity were universally appreciated. He loved his profession, and the noble science with which it is conversant. He repeatedly refused offers of advancement to the bench, preferring to dedicate his time to study. He accumulated a splendid library, the greatest part of which is now in Lincoln's-Inn Library.

Before we close our notice of this great man, we must draw the attention of our readers to the following letter, which he addressed to the chancellor, in 1804, when it was understood that a plot had been formed for the assassination of Buonaparte. This letter has never before been printed, and has been kindly placed at our disposal by a member of his family:—

"My Lord:

"There ought to be an immediate inquiry made by authority, whether any of the king's subjects, or any aliens resident here, have been concerned in the assassination plot, and also an offer made

to the French government to permit them to send over any they please, or direct any other mode of inquiry that this government can pursue, in order to satisfy them that the English have in the utmost detestation any such attempt; and if any of the French here shall be discovered to have been guilty, to send them over immediately, and if any of the English should, to commit them, (if not of the lowest class,) and prosecute them by law, and in so extraordinary a case, to procure an ex post facto law if necessary; for this assertion I submit to your lordships the following reasons, *viz.*

"There are jura belli, and assassination is a violation of those rights; but it is impossible for any administration to be responsible for the conduct of all who live under it; all they can do is to signify their detestation of so infamous a practice, as Lord Nelson did in the house of Lords—to do all they can in their power to punish it, in imitation of the Roman consul, to whom an offer was made, by one of King Pyrrhus's subjects, to poison that dangerous enemy: the consul sent the traitor to the king with an account of the offer. Likewise a Grecian government rejected an offer, which, if accepted, would have delivered them from a dangerous foe, merely because Aristides informed them, though it would be effectual, it would be unjust, and they would not so much as receive the communication of what the offer was.

"There are some laws universally received by all civilised nations, and among these there are some that are considered of force, even between nations in open hostility: the assassination of princes or other rulers, by those who live under their protection, and as such have access to their persons, is so execrable,

that the encouragers of it are, by the general law of all civilised nations, considered as common enemies to all mankind; and in so clear a case as that, the law of nations is part of the law of this country, and so declared by Lord Hardwicke and Lord Mansfield, in a case not more atrocious than the present, 3 Burr. 1481, and 4 Burr. 2016: and in the preamble of the Stat. 7 Anne, c. 12, it is recited that the several actions then depending against the ambassador of Peter the Great, were contrary to the law of nations; and that is mentioned amongst the reasons for enacting that they should be vacated and cancelled; and yet there was no municipal law, prior to that statute, by which they were void: this act of parliament was necessary for preventing war with this great emperor. The present case is more atrocious, and the mischief more extensive, and the consequences more dangerous, than that of war, even with so great a power as that of Russia; for it is necessary to prevent the nation being devoted to destruction by all who might deem them guilty of so foul an act, if they acquiesced under the charge without any vindication. There are many maxims of law, but there is one that is sovereign, "Salus populi suprema lex esto." This maxim is recognised by the Law of the Twelve Tables, Cicero de Legibus, lib. 3, sec. 3, which were derived from the Grecians, and as far as can be traced, is coeval with human society; therefore so clear a case as the present cannot want the aid of precedents; but if it did, the above opinions and act of parliament are sufficient for all that is contended for, because in this particular instance, an ex post facto law is, for the reasons alleged, more reasonable than in that above mentioned, or than the ex post facto law for banishing Atter

bury, Bishop of Rochester, or than several other ex post facto laws.

"Yours, &c. G. HILL,

"King's Ancient Serjeant at Law."

Hill was a profound real property lawyer, and was probably the last barrister who united the functions of the conveyancer with those of the advocate. In his early life, the serjeant was exceedingly attached to literary pursuits, and was such a proficient in science, as to become a great favorite with the famous blind professor, Sanderson, who would declare, that "if Hill would devote himself to mathematics, he would be the greatest mathematician of the age."

Serjeant Hill died at the age of ninety-two, respected and beloved. He was frequently consulted by the judges after he had retired from practice—so high an opinion was entertained of his learning and talents. The memory of such a man, so eminent for his virtues, we may say in the language of Milton, "God and good men will not let die."

Between the good old serjeant and the subject of our next notice, there is but little similarity, except in eccentricity of character.

Willes, chief justice of the Common Pleas, though a good lawyer, was scarcely fitted by his habits and character for the high post to which he was appointed. He was greatly disliked by the Pelhams and Lord Hardwicke; but he was befriended by Sir Robert Walpole, to whom he owed his elevation. Willes was a gambler and a debauchee. So little did he disguise his taste that on one occasion he was seen playing cards in the public rooms at Bath. Here he was recognised by a young barrister, who re-

solved to annoy him. Feigning intoxication, he rolled up to the table where his lordship was sitting, and getting behind the chair, looked over his hand. On this Willes turned round in a tremendous passion, and gave the intruder a severe reproof. "Sir," said the barrister, pretending to stagger, "I beg your —pardon—but I want to—improve—in whist playing;—so—so—I came—to look—at your playing; —for—if—if—I'm not—mistaken, sir—you're a *judge!*" Willes would not readily tolerate the impertinence of any one who ventured to remind him of the inconsistency of his conduct with the dignity he ought to preserve on account of his judicial character. A person once called at his house to apprize him that many scandals were in circulation, impeaching his moral character. "Why, my lord, all the world says that one of your maid servants is with child!" "Well, sir," replied Willes, coolly, "and what is that to me?" "Oh! my lord, but they say that it is by your lordship!" "Well, sir, and what's that to you?" was the reply of the chief justice, on which the abashed mentor slunk out of the room. Dr. Johnson tells a story of Willes's "trying a lady of easy virtue," one Miss Betty Flint, for stealing a counterpane; but his lordship summed up favorably, and the fair prisoner was acquitted. From an examination of the Sessions Papers, it would appear that there is some mistake in this last particular. When he was appointed to the bench, Willes took leave of the society of Lincoln's-Inn, of which he had been a member. The attorney-general, Sir John Strange, made a long speech, in which, according to custom, he lauded the new judge, in old phrases; and when he had done, Willes turned round, and said he felt excessively

grateful for all the fine encomiums which had been bestowed on him, who so little merited them, and he begged permission to conclude with a very honest declaration from the highest authority: "The lot is fallen unto me in a fair ground; yea, I have a goodly heritage." Willes had so great an aversion to attorneys, that they used to shun his court, and carry all their business into the King's Bench, where Yorke's filial piety, as Lord Orford observes, "would not refuse an asylum to his father's profession."

The next character we shall consider was not only an eccentric lawyer—he was a great judge. We have not thought it desirable to separate the consideration of his professional from his judicial character; much, therefore, in our sketch does not properly belong to the class of eccentricities.

Robert Henley Lord Northington, is far better known by his personal peculiarities, than by his merits as a Chancellor. In the early part of his life he was conspicuous for the warmth of his devotion to "Bacchus, jolly of god wine." His excesses in this way subjected him, in an after period, to repeated and severe attacks of gout. When suffering from one of these, he was heard to mutter to himself, while walking from the woolsack to the bar, "If I had known these legs of mine were meant to carry a Lord Chancellor, I would have taken better care of them when I was a boy." He is said while at the bar to have displayed "lively parts, and a warm temper." Horace Walpole says that he was "a lawyer in vogue, but his abilities did not figure in proportion to the impudence of his ill-nature." There is probably some malice and much truth in this character. A ludicrous-

anecdote is related of him whilst on the western circuit, but which certainly displays him in a more amiable light. In a trial at Bristol he had to examine a Quaker named Reeve, a merchant of some consequence in that city. As he was a hostile witness, Henley, of course, did not spare his wit or raillery. After the cause was over, and the lawyers were all dining together at the White Hart, Mr. Reeve sent one of the waiters to let Mr. Henley know that a gentleman wanted to speak to him in an adjoining room. As soon as Mr. Henley had entered the room, Mr. Reeve locked the door and put the key in his pocket. "Friend Henley," said he, "I cannot call thee, for thou hast used me most scurrilously. Thou mightest think, perhaps that a Quaker might be insulted with impunity; but I am a man of spirit, and am come to demand, and will have, satisfaction. Here are two swords—here are two pistols—choose thy weapons, or fight me at fisty-cuffs, if thou hadst rather; but fight me thou shalt, before we leave this room, or beg my pardon." Mr. Henley pleaded in excuse that it was nothing more than the usual language of the bar; that what was said in court should not be questioned out of court; that lawyers sometimes advanced things to serve their clients, perhaps beyond the truth: but such speeches died in speaking; that he was so far from intending any insult or injury, as really to have forgotten what he had said, and hoped the other would not remember it; upon his word and honor he never meant to give him the least offence, but if undesignedly he had offended him, he was sorry for it, and was ready to beg his pardon, which was a gentleman's satisfaction. "Well," said Mr. Reeve, "as the affront was public, the reparation

must be so too; if thou wilt not fight but beg my pardon, thou must beg my pardon before the company in the next room." Mr. Henley, with some difficulty, after some delay, submitted to this condition, and thus this fray ended. No farther notice was taken on either side, till after some years the Lord Chanceller wrote a letter to Mr. Reeve, informing him that such a ship was come or coming into the port of Bristol, with a couple of pipes of Madeira on board consigned to him. He, therefore, begged of Mr. Reeve to pay the freight and the duty, and to cause the wine to be put into a waggon, and sent to the Grange, and he would take the first opportunity of defraying all charges, and should think himself infinitely obliged to him. All was done as desired; and the winter following when Mr. Reeve was in town he dined at the chancellor's with several of the nobility and gentry. After dinner the chancellor related the whole story of his acquaintance with his friend Reeve, and of every particular that had passed between them, with great good humor and pleasantry, and to the no little diversion of the company.

Henley owed his elevation to an accident. When the Pitt and Fox ministry came in, in 1757, the great seal was offered successively to Lord Hardwicke, Lord Mansfield, Sir Thomas Clarke, Chief Justice Willes, and Sir John Wilmot. They all however declined it. The ministry had then no other alternative but to raise the Attorney-general Henley, to the woolsack. "There is an amusing anecdote," says Lord Henley, "respecting this transaction, current in the profession, and which the late Lord Ellenborough used to relate with his characteristic humor. Immediately after Willes had refused the seals, Henley called upon him

at his villa, and found him walking in his garden, highly indignant at the affront which he considered that he had received in an offer so inadequate to his pretensions. After entering into some detail of his grievances, he concluded by asking whether any man of spirit would, under such circumstances, have taken the seals, adding, Would you, Mr. Attorney, have done so? Henley, thus appealed to, gravely told him that it was too late to enter into such a discussion, as he was then waiting upon his lordship to inform him that he actually had accepted them." Henley held them as Lord-keeper, without a peerage, until Lord Ferrers' trial in 1760, when he was created Baron Henley. On the accession of George III, he surrendered the great seal, which was returned to him as Lord Chancellor, and within a few months he was created Earl of Northington.

Although Lord Northington will never rank amongst our first rate judges, every one will readily admit the justice of the character Lord Eldon gave him, when he said "that he was a great lawyer, and very firm in delivering his opinions." Only six of his decrees have been reversed upon appeal; and lawyers have doubted whether three of these reversals were correct.* A parallel has been often instituted between him and Lord Thurlow. There are undoubtedly sufficient points of resemblance to justify such a parallel. Like Thurlow, Lord Northington was a devoted convivialist. George III used

* When he had been pressed to refer a complicated account to the master, he took out his watch, and said, "Observe this curious piece of mechanism: if it was out of order, I would as soon send it to a blacksmith to be set to rights, as refer an account like this to a master. I refer it to two merchants."

to, relate, with his accustomed humor, the mode in which he asked permission to abolish the chancellor's evening sittings on Wednesdays and Fridays during term, in order that he might have time to finish his bottle comfortably at his leisure. So admirable a reason could not, of course, be resisted; and his Majesty immediately granted the required permission. He was also like Lord Thurlow, in that he was "given to swearing." When returning from the house of lords in his ponderous state coach, every jolt of which, as it rumbled along, caused infinite pain to his gouty extremities, the agonised chancellor has been heard to utter "curses *both* loud and deep." The majesty of the mace and seals had no effect in checking the expression of his sensations. His friends have declared that the woolsack was not always held sacred. Mr. Speaker Onslow who was remarkable for his gravity, one day complained to a friend in the house of commons, that on his way down he had been stopped in Parliament-street by the obstinacy of a carman. His friend told him that he had heard the chancellor had been detained some minutes by the same cause. "Well," said the speaker, "and did not his lordship show the wrong-headed wagoner the mace, and strike him dumb with terror?" "Not at all," was the reply, "he did nothing of the sort; but he swore by G—, that if he had been in his private coach, he would have got out and thrashed the d—d rascal to a jelly."

Anstey has celebrated him, under the name of "Lord Ringbone," in his "New Bath Guide." A young visitor who is in the same lodgings with his lordship, takes to practising dancing, much to his annoyance:—

"Lord Ringbone, who lay in the parlor below,
On account of the gout he had got in his toe,
Began on a sudden to curse and to swear:
I protest, my dear mother, 'twas shocking to hear
The oaths of that reprobate gouty old peer.
'All the devils in hell sure at once have concurred
To make such a noise here, as never was heard;
Some blundering blockhead, when I am in bed,
Treads as hard as a coach-horse, just over my head;
I cannot conceive what the plague he's about:
Are the fiddlers come hither to make all this rout
With their d—d squeaking catgut, that's worse than the gout?
If the aldermen bade 'm come hither, I swear,
I wish they were broiling in hell with the mayor;
May flames be my portion, if ever I give
Those rascals one farthing as long as I live.'"

Lord Henley, his grandson, says of this chancellor, that "the only exception to his almost universal kindness, was in his manner towards his son, with whom his deportment was marked by a stately reserve and coldness." But it was marked with something more. When upon his death-bed, he desired his gardener to cut down a clump of trees, simply because his son was fond of them. The gardener, anxious not to offend the son, and every moment expecting the earl's decease, neglected to obey his order. When Lord Northington learnt this, he sent for the gardener, and thus addressed him: "So, d—n you! You have not done as I ordered you; you think I am going; so I am, and be d——d to you, but you shall go first: here, strip this fellow, and kick him out of doors!" Lord Henley claims for his ancestor the merits of a religious character. He says, amongst the manuscripts he left behind him, were two beautiful prayers com-

posed for the use of his wife.* It has, however, been asserted, that he maintained his habit of using oaths to the last. When on the point of death he is said to have exclaimed, "I'll be d——d if I'm not dying!" During his sickness, his wife, daughters, and some female friends, coming into his room to ask after his health, could not refrain from weeping. "Surly Bob," as he was called, on seeing this, roared out to his nurse, "Turn out all those snivelling fools, except Bridget!" The following anecdote is understood to refer to Lord Northington, at the time he was lord-keeper of the great seal. Stepping into his carriage one day on his return home from the house of lords, where one of his decrees had just been reversed, he ordered his coachman to drive fast over the stones, adding to the gentleman with him, "The noise will drive all disagreeable ideas out of my head!" The plan succeeded very well, till an old woman crossing St. Martin's-lane, caused the coachman to "pull up." The lord-keeper finding the coach stop, desired the purse-bearer to inquire the reason from the coachman,

* In his last illness, he sent for the Marquis of Carmarthen, a man of great piety, who, though surprised at the message, waited upon him, and begged to know in what way he could assist his lordship. "I sent for you," said Lord Northington, "to beg you to recommend me to some able parson whose advice I might safely take in regard to the necessary settlement respecting the future welfare of my soul, which I fear will shortly be ejected from my body." "My lord," replied the marquis, "I am surprised at the question; as chancellor, your lordship has had the disposal of much church preferment, which, doubtless, you always bestowed on pious and deserving persons. For instance, what do you think of Dr. ——?" "Oh! name him not," loudly exclaimed the chancellor, "that is one of my crying sins. I shall certainly be d——d for making that fellow a dean!"

who replied, "I know my master would not have me kill the poor old woman. She is almost under the horses' feet." The keeper, finding the woman was no longer in danger, exclaimed "Suppose we had killed her, her friends would have taken her to the house of lords, and they would undo all we have done."

One dirty day, whilst walking along Parliament-street, very plainly dressed, the chancellor picked up a handsome ring, which was, according to custom, immediately claimed by one of the fraternity well known as ring-droppers. This *gentleman* feigned exceeding delight at recovering an article of such value, and begged the chancellor, whose person he evidently did not recognise, to accompany him to a neighboring coffee-house, and partake of a bottle of wine. To this Lord Northington, who was fond of a joke, readily assented, and they adjourned to a tavern in the neighborhood where they discussed the news of the day over a bottle. They had not been seated long before other gentlemen entered, all of whom, the chancellor observed, appeared acquainted with his friend. The conversation on this became general, when at last one of the company proposed a game of hazard, to which another objected, and observed in an under-tone of voice, which however did not escape his lordship's ears; "D—n the loaded dice—he is not worth the trouble—pick the old flat's pocket at once!" Upon this the chancellor discovered himself, and assured the company if they would confess why they supposed him such an immense flat, he would say nothing to the police about them. One of them replied, "We beg your lordship's pardon, but whenever we see a gentleman in *white* stockings on a *dirty* day, we con-

sider him a regular pigeon, and pluck his feathers, as we should have plucked your lordship's."

LORD THURLOW, by his natural disposition, was utterly disqualified, one would have thought, for discharging the duties of a judge, or performing the part of a courtier. His violent and often ungovernable temper—which, in its subdued moods, deserves the name of surliness, or bluntness—seemed to form an insuperable impediment to success in either of these capacities. Yet despite it Lord Thurlow was a supple and pliant courtier; and, although his learning has possibly been over-rated, an able and impartial judge. He showed the natural fierceness of his disposition when quite a boy. Dr. Donne, one of the prebendaries of Canterbury cathedral, held a living somewhere in the neighborhood of Thurlow's father with whom he became intimate. Having observed that young Thurlow was rough and over-bearing, he obtained his father's permission to send him to Canterbury school, with the master of which he had had a quarrel, in the hope that the intractable temper, and fearless insolence of the future chancellor, would render him a constant source of annoyance to the unfortunate master. This plan, so creditable to its designer, is said to have succeeded most admirably; and Thurlow realised every expectation that the reverend prebendary had formed respecting his powers of annoyance.

At Cambridge he became notorious for the daring he displayed in setting the discipline of his college at defiance, and in exhibiting a most supreme contempt for the persons and character of those by whom that discipline was maintained and enforced.

Upon one occasion, having been guilty of some act of insurbordination, he was summoned before the dean, who, as a punishment for his offence, desired him to translate a paper of the Spectator into Greek, and when he had done so, to bring the translation to him. The first part of this order Thurlow obeyed: the second he disregarded. He easily performed the task imposed, but, to annoy the dean, whose deficiencies, in classical learning were notorious, carried it to one of the tutors. When the dean heard of this he assembled all the resident fellows of the college, and sent for Thurlow. Upon Thurlow's entering the room, the dean thus addressed him:—"How durst you, sir! carry your translation to Mr. ———, when I desired you to bring it to me." Thurlow replied, with the greatest composure, "that he had done so from no motive of disrespect to the dean, but really from a compassionate wish not to puzzle him." The enraged dean immediately desired him to quit the room, and then turning to the fellows present, declared that Thurlow ought to be either expelled or rusticated. Some one, however, wisely suggested that if publicity were given to the transaction, the reputation neither of the dean nor of the college would be much benefited; and that it would be far more prudent to let the matter drop, than attract further notice to it. This advice was followed.

With this dean, Thurlow appears to have been involved in constant warfare. Upon another occasion, when summoned before him to answer some charge that had been brought against him, Thurlow's demeanor was not quite so respectful as the dean considered befitted their relative stations, and rather sharply reminded him that he was speaking to the dean of his

college. Thurlow, in no wise abashed at this reproof, assumed a mock reverential air, and in every sentence of his vindication, took care to insert "Mr. Dean," until, the irate dignitary was compelled to dismiss both the accusation and the accused. At length, however, Thurlow received a friendly recommendation to withdraw himself from the university, in order to prevent the necessity of a formal expulsion. He left Cambridge without a degree.

But Thurlow, though a rough, harsh, and violent, was not a bad-hearted man. When he had become chancellor, he sent one morning for his old friend the dean, who had not forgotten, it is said, their ancient enmity. Upon his entry, the chancellor accosted him—"How d'ye do, Mr. Dean!" "I have quitted that office, my lord," said the reverend divine, rather sullenly, "I am *Mr. Dean*, no longer." "Well, then," said his lordship, "it depends upon yourself whether you be so again. I have a deanery at my disposal, to which you are heartily welcome."

Crabbe, soon after he came up to London, a poor penniless adventurer, sent a copy of verses to the chancellor, with a letter imploring the honor of his patronage. To this application Thurlow made a cold reply, regretting that his avocations did not leave him leisure to read verses. Crabbe, stung with this repulse, addressed to him "some strong but not disrespectful lines, intimating that in former times the encouragement of literature had been considered as a duty appertaining to the illustrious station he held.*

* The days when it was held the duty of ministers to encourage literature, had been long past. The story of Maurice and William Pitt is well known. Maurice obtained permission from Pitt to dedicate to him his History of Hindoostan.—When the book was published, the historian called in Downing-

Of this effusion the chancellor took no notice whatever."

After Crabbe had, through the discriminating goodness of Burke, been relieved from the immediate pressure of distress, he received a note from Thurlow inviting him to breakfast the next morning. He was received by the chancellor with more than ordinary courtesy. "The first poem you sent me, sir," said Thurlow, "I ought to have noticed, and I heartily forgive the second."* They breakfasted together, and at parting his lordship put a sealed paper into Crabbe's hand, saying, "accept this trifle, sir, in the meantime, and rely on my embracing an early opportunity to serve you more substantially, when I hear you are in orders." The paper contained a bank-note for a hundred pounds. The promise Thurlow made at that time he soon performed. When Crabbe was qualified to hold church preferment, he received an invitation to dine with the chancellor. After dinner, addressing the poet, his lordship told him that "by G— he was as like parson Adams as twelve to a dozen," and that he should give him two livings in Dorsetshire, that had just become vacant.

Another anecdote will illustrate still more forcibly the peculiarity of his temper. One day he was sitting in his private room to hear some application at the

street to thank his patron for the honor he had done him. After expressing, perchance in style somewhat oriental, his gratitude for the favor conferred, he was rather mortified at the minister's dismissing him with a distant bow, and the cold compliment of —"the favor was to me, sir."

* Perhaps Thurlow's conduct is explained by the following sentence in one of Cowper's letters:—"Thurlow will give grudgingly, in answer to solicitations, but delights in surprising those whom he esteems with his bounty."

time that the lords were assembling in their house.—Being unable to commence business withont their speaker, they desired Mr. Quarme, deputy-usher of the black rod, to go to the chancellor and tell him the house had met. Mr. Quarme went and delivered his message. "Umph" was the only reply which the chancellor vouchsafed. The deputy-usher returned to the house—some time passed, and Lord Thurlow did not make his appearance. A peer went down to Mr. Quarme, and begged him to go again and tell the chancellor plainly that the lords were waiting for him—that the hour appointed for the house meeting had long passed—and that they could wait no longer. The deputy-usher returned to the chancellor, and with some emphasis repeated the message with which he was charged. The chancellor deigned to reply no otherwise than with his accustomed growl. "But, my lord," said Quarme, with some warmth, "I must have your lordship's answer. The lords are waiting!" "D—n the lords," said Thurlow quickly, fixing a look of rage on the usher. "You may d—n the lords as much as you like," exclaimed the undaunted official, "but I'm d——d, were you twenty times chancelllor, if you shall d—n me!" The chancellor gazed with astonishment at Quarme—the audacity of a mere servant of the house thus bearding its chief excited his amazement: at length his features expanded into a smile, and rising from his chair he exclaimed, "By Jove, you are a bold fellow: come and dine with me to-morrow." "And so I will," replied Quarme; with whom, ever after, the chancellor continued on terms of friendship.

As speaker of the house of lords, Thurlow was distinguished for the dignity with which he enforced

the rules of debate. Upon one occasion he called the duke of Grafton to order, who, incensed at the interruption, insolently reproached the chancellor with his plebian origin, and recent admission into the peerage. Previous to this time Thurlow had spoken so frequently, that he was listened to by the house with visible impatience. When the duke had concluded his speech, Thurlow rose from the woolsack, and advanced slowly to the place from whence the chancellor generally addresses the house; then fixing upon the duke the look of Jove when he grasps the thunder—"I am amazed," he said, in a level tone of voice, "at the attack which the noble lord has made upon me. Yes, my lords," considerably raising his voice, "I am amazed at his grace's speech. The noble duke cannot look before him, behind him, or on either side of him, without seeing some noble peer, who owes his seat in this house to his successful exertions in the profession to which I belong. Does he not feel that it is as honorable to owe it to these, as to being the accident of an accident? To all these noble lords, the language of the noble duke is as applicable and as insulting as it is to myself. But I do not fear to meet it single and alone. No one venerates the peerage more than I do; but, my lords, I must say the peerage solicited me, not I the peerage. Nay, more, I can say, and will say, that as a peer of parliament, as speaker of this right honorable house, as keeper of the great seal, as guardian of his Majesty's conscience, as lord high chancellor of England, nay, even in that character alone in which the duke would think it an affront to be considered, but which none can deny *me*—as a MAN, I am at this moment as respectable—I beg leave to add, I am at this moment as much respect-

ed—as the proudest peer I now look down upon." "The effect of this speech," says Mr. Butler, "both within the walls of parliament, and out of them, was prodigious. It gave Lord Thurlow an ascendancy in the house, which no chancellor had ever possessed; it invested him, in public opinion, with a character of independence and honor; and this, although he was ever on the unpopular side of politics, made him always popular with the people."

There is one anecdote recorded of Lord Thurlow, which reflects the highest credit upon him. In 1782, when Lord North resigned, the king determined to withhold from him the pension usually granted to a retiring prime minister. Thurlow, then chancellor, represented to his Majesty, that Lord North was not opulent, that his father was still living, and that his sons had spent a great deal of money. The king answered, "Lord North is no friend of mine." "That may be, Sir," replied Thurlow, "but the world thinks otherwise; and your Majesty's character requires that Lord North should have the usual pension." The king, convinced that his chancellor was in the right, at last gave way. This conduct was not forgotten by Lord North. When the coalition ministry came into power in 1783, Lord North became secretary of state for the home department. Fox having resolved to get rid of Thurlow, North received the king's commands to write to the chancellor, desiring him to surrender the great seal. North, positively refused to comply with this order, saying, "when I retired last year, Lord Thurlow was the man who prevented my retreat from being inconvenient to me; shall the first act of my return to office be to give Lord Thurlow pain? I will not do it!" The king was

amused at Lord North's pertinacity, and observed, that "while he kept secretaries, he certainly was not bound to write his own letters." Lord North persisting, Mr. Fox was at last obliged to undertake the matter himself, although it did not come within his department. Fox discharged this duty, it is said, in a very harsh manner; which is strange, for harshness was foreign to Fox's character, and Thurlow it is known entertained by no means an unfriendly opinion of him.

During Lord North's administration in 1781, Fox always expressed himself in the house of commons in terms of the highest esteem for Lord Thurlow. Whilst he was launching his invectives against the ministry, he spoke of the chancellor in very different terms. Of him he said, "he is able—he is honest—he possesses a noble and independent mind—he stands alone as part of such an administration." "His colleagues," he said upon another occasion, "detest him for his virtues. * * They seize every occasion to render his position uneasy." Only a few days before the resignation of the North administration in 1782, Fox said that "Lord Thurlow shewed to the world that he had no share in the measures of the ministry." It has been said that Thurlow was unconsciously the means of furnishing Fox with much valuable information respecting ministerial tactics. For, sullen and morose as he was, the chancellor was much addicted to convivial enjoyments; and when participating in pleasures of this description, was far from preserving a very strict control over his tongue. In fact, when carousing with the choice wits that used to assemble at the table of Rigby, then army pay-master, Thurlow used to ex-

press his opinions on men and measures, with unreserved freedom: some of these opinions no doubt reached Fox's ears; who, when he found that the chancellor had formed the chief impediment to the formation of the coalition ministry, made no scruple in compelling him to give up the great seal.

Thurlow's convivial habits on one occasion exposed him to some peril. He had dined with Mr. Jenkinson, at his seat near Croyden, together with Dundas and Pitt (then chancellor of the exchequer,) and returned home with them in the evening on horseback. When the party, who were all tolerably merry, reached the turnpike gate, between Tooting and Streatham, they found it open. Having no servant with them, they determined to pass through without paying the toll. The keeper, awaked by their horse-hoofs as they galloped through, sprung up, and ran into the road, and finding they did not stop when he hallooed, discharged his blunderbuss after them, fortunately without effect. He took them it seems, for a gang of highwaymen, that had been committing depredations in the neighborhood. The story afterwards got about, and excited much amusement.*

For some time before Lord Thurlow was a second time deprived of the great seal, he lived on unfriendly terms with Mr. Pitt.† Mr. Nicholls who was intimate

* The author of the Rolliad has thus celebrated this ludicrous adventure: alluding to Pitt, he says,

"How, as he wandered darkling o'er the plain,
"His reason drown'd in Jenkinson's champaigne,
"A rustic's hand, but righteous fate withstood,
"Had shed a premier's for a robber's blood."

† Thurlow did not altogether like the tone of conscious superiority which the youthful prime minister assumed towards

with him, never could discover the cause of this. He mentions, that in conversation with him Lord Thurlow observed, "when Mr. Pitt first became prime minister it was a very unpleasant thing to do business with him; but it afterwards became as pleasant to do business with him as with Lord North." It is not difficult to account for Pitt's conduct. In the first place, it has been pretty well established, that during the king's illness in 1788, Thurlow entered into negotiations with the prince's party, in order that the change of men and measures, then anticipated, might not affect his retention of the great seal. His visits to the king afforded him great facilities for communicating with the heir apparent and his friends, without exciting the suspicions of his colleagues. But his own inadvertence betrayed to them a secret they could hardly otherwise have learnt. He made his appearance one day in the apartment of the palace where the council was sitting without his hat; and when some one remarked on it, he incautiously said that he supposed he must have left in the other room.* The looks of those present immediately

him. Once, at table, Pitt was expatiating on the superiority of the Latin over the English language; and cited, as an instance, the fact that two negatives made a thing more positive than one affirmative could do. "Then your father and mother," exclaimed Thurlow in his gruff style, "must have been two negatives, to have made such a positive fellow as you are."

* Lord Thurlow advised the Prince of Wales not to show any impatience to assume the powers of royalty, because if the king's illness were of any duration, the regency would necessarily devolve upon him. He told Mr. Nicholls, however, that if the circumstances had required Pitt's Regency Bill to have been passed, he should have given his support to it *reluctantly.*

made him aware of his false step, but it was too late to retrace it.*

In the second place it is to be remembered, that Lord Thurlow always claimed for himself the distinctive epithet of "The king's friend," believing that he held his office rather in virtue of the king's personal regard than of the recommendation, or by the wish of the prime minister. A pretension of this kind could never be endured by a statesman like Pitt, although he might know that it was a mere pretension. And so, indeed, did all who knew any thing of the king, whether of his personal disposition, or his notions of public duty. Lord North said to Mr. Nicholls, "Your friend, Lord Thurlow, thinks that his personal influence with the king authorises him to treat Mr. Pitt with *humeur*. Take my word for it, whenever Mr. Pitt says to the king, 'Sir, the great seal must be in other hands,' the king will take the great seal from Lord Thurlow, and think no more about him." Thurlow had calculated differently his

* The cabinet squabbles between Thurlow and Pitt soon became known. "The account I gave of them," says Mr. Bentham, was expressed by three words, 'Le chancellier chancele;' and the truth of the intelligence was not long after demonstrated by the result."

Bishop Watson complains of Thurlow's unfairness in a debate respecting the regency:—"The reverend lord, in support of the prince's rights, quoted a passage from Grotius. The chancellor, in his reply, boldly asserted that he perfectly well remembered the passage I had quoted from Grotius, and that it solely respected natural, but was inapplicable to civil, rights. Lord Loughborough, the first time I saw him after the debate, assured me that before he went to sleep that night he had looked into Grotius, and was astonished to find the chancellor had, in contradicting me, presumed on the ignorance of the house, and that my quotation was perfectly correct."

majesty's feelings toward him. Speaking of him in the house of lords, at the time of his first illness, he said with tears in his eyes, "My debt of gratitude to his majesty is ample for the many favors which he has conferred upon me, and when I forget it, may God forget me!"* When Wilkes heard of this speech, he exclaimed, "God forget you! he'll see you d——d first!" Lord North's prediction was speedily verified, and, by the advice of Mr. Pitt, Lord Thurlow was deprived of the chancellorship.

Thurlow was severely mortified at his dismissal. "No man," said he, "has a right to treat another in the way the king has treated me. We cannot meet again in the same room." The following account is given, by Sir John Sinclair, of the manner in which Lord Thurlow was dismissed:—"None of the ministers seemed willing to be the person to demand the seals (which it was desirable should be done personally), from the ungracious reception, which it was supposed he would meet with. At last, Lord Melville was prevailed upon to undertake the task. He adopted the following plan for that purpose. The evening before, he sent a note to the chancellor, informing him that he proposed having the honor of breakfasting with him next day, and that *he had some very particular business to settle with him.* On his coming next morning, Lord Thurlow said to him, 'I know the business on which you have come. You shall have the bag (purse) and seals. *There they are,*' pointing to a table on which he had placed them, 'and there is your breakfast,' of which they partook

* Burke said that the tears Thurlow shed upon this occasion were "more like the dismal bubbling of the Styx, than the gentle murmuring streams of Aganippe."

very sociably together. Lord Melville said that he never saw Lord Thurlow in better humor, and they parted, apparently, very good friends."

As a judge, he has usually been rated very highly, but the tendency of modern opinion has been to estimate him somewhat lower. Mr. Butler has described his decrees as "strongly marked by depth of legal knowledge, and force of expression, and by the overwhelming power with which he propounded the result; but they were," he adds, "too often involved in obscurity, and sometimes reason was rather silenced than convinced." This method, as it has been remarked, is precisely that which we might expect in a judge who is indebted to the learning of others for the judgments which he delivers, and who is not himself familiar with the chain of reasoning, the conclusion of which constitutes his decree. It is well known that most of his judgments were framed by Mr. Hargrave.* Thurlow has been charged with having allowed the causes in his court to accumulate; but we doubt if this accumulation be not rather due to the imperfect constitution of the court, than imputable to the chancellor himself. When on the bench, he is said to have restrained with difficulty those forms of expression, which, though habitual to him, would hardly have suited the dignity of his office.

* Hargrave acquired the name of "Thurlow's Provider." Mr. Cradock mentions a mutual friend saying to him of the chancellor, "I met the great *law-lion*, this morning, going to Westminster and bowed to him; but he was so busily reading in his coach what his *provider* had supplied him with, that he did not see me." Mr. Hargrave is understood to have received a very liberal recompence for the services which he rendered to Thurlow in this way.

He disliked, and always checked in his court, any tendency to what is sometimes called eloquence. He once cut short a flowery advocate in the middle of a metaphor, and bid him read his brief. His behavior towards the bar was rough and uncouth; but not overbearing. He was probably too conscious of his deficiencies in knowledge of law to have attempted such conduct. On the day before the court rose for a long vacation, the chancellor was leaving without making the then customary valedictory address to the bar; he had nearly reached the door of his room when a young barrister said to a friend, in a loud whisper, "He might, at least, have said 'd—n you!'" Whether Thurlow overheard this remark, or whether, until that moment the matter had escaped him, we cannot tell; but he returned to his chair, and made the usual complimentary speech.

At the council-board, Thurlow was both wayward and timid. Pitt used to declare, that "he proposed nothing, opposed every thing, and agreed in nothing" —a character like that which a Spanish historian gave of the unfortunate prince Don Carlos. "He was," he said, "*Non homo sed discordia*," not a man, but the spirit of discord personified. Very often matters of state were discussed at the cabinet dinners, and Thurlow, when the cloth was cleared, refusing to join his colleagues in their deliberations, would get up, quit the table, and stretching himself at full length on three chairs, would go to sleep, or at least affect to do so. With such a colleague as this, Pitt, it cannot be supposed, could have much community of feeling. The dislike, however, seemed to have been mutual. Thurlow very freely expressed his opinion on Pitt's conduct, in supporting the opposition in the impeach-

ment of Warren Hastings. The grounds on which Mr. Pitt supported the impeachment differed substanstially from those on which the opposition proceeded. Pitt grounded his support on the fact, that the conduct which Hastings pursued towards Cheyt-Sing (whom he considered as a criminal, but whom the Whigs regarded as an oppressed prince) showed an *intention* of punishing him too severely. "This *intention*," Pitt contended, "was criminal; and for this *intention* he should vote for the impeachment." When Lord Thurlow heard of Pitt's *reason* for supporting Mr. Burke's motion, he reprobated with vehemence the injustice of grounding an impeachment on a mere *intention*. "If a *girl*," he said, in his growling style, "had talked law in these terms, it might have been excusable."

Of Lord Thurlow's private character, little can be said towards his credit. When young, he was guilty of the wildest excesses. Even as a schoolboy, he indulged in the greatest license. It was to this fact that the Duchess of Kingston alluded, when on her trial in the house of lords. Looking the attorney-general (Thurlow) full in the face, she said, "That the learned gentleman had dwelt much on her faults, but she could assure him that she, if she chose, could also tell a *Canterbury tale*."* By Mrs. Harvey, who lived with him, he had three daughters. His mistress, however, never obtained any improper influence with him in the disposition of patronage. Shortly after his accession to office, one of the commissioners of bankrupts having made application to her to secure

* Thurlow had a son by a daughter of a Dean of Canterbury, to whom he was *said* to have been married.

the chancellor's assent to his insertion in the new commission, then made out, it came to Thurlow's ears, and the applicant was the only individual who was omitted in the new commission. Thurlow has been suspected of having not

——————— "receiv'd
For gospel all the church believ'd."

This charge his brother, the Bishop of Durham, used to declare to be a foul calumny. To some one who repeated it to him, the right reverend prelate observed, "Ah! my dear sir, I see you participate in the general error—oh, yes! I assure you it is an error—a very lamentable error; for I can declare to you on my own personal knowledge, no one places greater confidence in the truths of religion than my brother. Often, sir—very often indeed—have I been sitting beside him, when he has been suffering from severe twinges of the gout, and I can assure you, with every twinge he exclaimed, 'Oh, God! good God!'"

To Lord Alvanley, who was appointed Master of the Rolls, Thurlow bore a strong dislike, and he offered every obstacle to his appointment. Indeed he would not consent to it until a warrant was actually in preparation for putting the great seal into commission. To show his dislike to the new master, after he was seated, Thurlow would often absent himself from the court of chancery, naming Mr. Justice Buller as his substitute. One day Lord Alvanley finding himself seriously unwell, sent his respects to the chancellor with an expression of regret, that extreme indisposition would prevent his sitting that

day at the Rolls. "What ails him," asked Thurlow, in a voice of thunder, of the bearer of the message. "If you please, my lord, he is laid up with dysentery." "D—— my ——!" exclaimed Thurlow, "let him take an act of parliament and swallow that—he'll find nothing so binding!"

Soon after he was made lord chancellor, Thurlow said to his brother, "Tom, there is to be a drawing room on Thursday, where I am obliged to attend, and I have purchased Lord Bathurst's coach, but have no leisure to give orders about the necessary alterations; do you see and get all ready for me." "Tom" complied; but when the carriage came to the door, remembered that the armorial bearings on the panels had not been altered. Knowing his brother's hasty temper, he immediately devised an expedient for preventing the discovery of his omission: he directed the door to be held open until the chancellor arrived and had taken his seat. When Thurlow had done so, he examined the interior of the coach, and fully satisfied with his survey, held out his hand to his brother and exclaimed, "Brother, the whole is finished to my satisfaction, and I thank you." The same expedient as to the door, was resorted to on his return, and with the same success.

Lord Thurlow was nick-named the "Tiger"—the "Bear" would have been a more appropriate designation. Of his gruff and surly behaviour, the following anecdotes have been related. He was stopping at the house of a nobleman in the country who was famous for his conservatory. Thurlow complained that he felt unwell. A walk through the gardens was proposed. During the walk the party entered one of the hot-houses, and some one asked

Thurlow if he would take some grapes. "Grapes, grapes," growled the chancellor, "why, didn't I tell you I'd got the gripes." When the chief justiceship of Chester was vacant, Mr. Davenport, who was intimate with the chancellor, wrote him this brief epistle. "The chief justiceship of Chester is vacant. Am I to have it?" The answer of Thurlow was equally concise: "No; by G—! Kenyon shall have it." He was consulted by Pitt as to the fittest person to be appointed to succeed Lord Kenyon at the Rolls, on a vacancy. "I don't care the devil whom you appoint," said he, "so that you don't appoint some one who, instead of lightening my load should heave his d——d wallet on my back." In illustrating Thurlow's affection for the church, the following anecdote must not be overlooked. He was once waited on by a deputation of dissenters, to request him to vote for the repeal of the Test Act. When the deputation (who came by appointment) arrived, they were asked into the chancellor's library, where a plentiful collation awaited their *discussion.* At length Thurlow appeared, when, gratified by their reception, they made a long harangue, to which he made a short reply in these words: "Gentlemen, you have called on me to request my vote for the repeal of the Test Act. Gentlemen, I shall not vote for the repeal of the Test Act. I care not whether your religion has the ascendancy or mine, or any, or none; but this I know, that when you are uppermost, you will keep us down, and now we are uppermost we will keep you down!" It is pleasant to be able to record an anecdote of a somewhat different character. Once at Bath, he entered the rooms booted and spurred. The master of the ceremonies approached him with

some awe, and delicately insinuated that such a costume was a violation of the regulations of the rooms, Thurlow took the reproof in exceeding good part, and desiring the potentate of fashion to apologise in his name to the company assembled, immediately withdrew. Lord Thurlow had at least this merit, that if he was overbearing to his equals, and proud to his superiors, he never insulted his inferiors,* nor treated them otherwise than with a good breeding, which, however commendable, was hardly consistent with his usual conduct. Although raised to the woolsack from political considerations, Thurlow was extremely attached to the study of the law, and is said to have sought legal occupation long after he had left office.

Lord Thurlow was a good scholar, and patronised literary men. Potter, the translator of Æschylus, and Bishop Horsley, experienced the benefits of his pa-

* We do not know whether the following anecdote does not in some way furnish a contradiction to this remark. One day, in crossing the foundling fields, Lord Thurlow was overtaken by a little sweep, as sooty as little sweeps usually are. The urchin in passing his lordship touched his ruffle, which consequently assumed a hue as dark as the boy's own visage. D—n your black face!" exclaimed the ex-chancellor, angrily. The boy looked up at Thurlow's dark countenance—" D—n your black face, too," he shouted, and bounded off. His appearance was indeed in no way prepossessing. When a portrait of him was shown to Lavater, the physiognomist, having examined it for a moment, said, " Whether this man be on earth or in hell, I know not; but wherever he is, he is a tyrant, and will rule if he can." The Duke of Norfolk had a fancy for owls, of which he kept several. He called one, from its resemblance to the chancellor, Lord Thurlow. The duke's solicitor was once in conversation with his grace, when to his surprise, the owl-keeper came up and said, " Please you, my lord, Lord Thurlow's laid an egg."

tronage. With Hayley he became acquainted. In the first instance Hayley sent him a poem which he had published on the revolution of 1668, but which fell still-born from the press. In acknowledgment, he received the following characteristic note from Thurlow:

"The Chancellor presents his best respects to Mr. Hayley, and returns him many thanks for his poems. They give a *bright relief* to the subject. William is much obliged to him and Mary more; and if it may be said without offence, Liberty itself derives advantages from this dress."

It would not be difficult to multiply these examples of eccentricities—enough however have been exhibited for our purpose. We have confined ourselves to examples of past times; it would have been easy for us to have selected, from our contemporaries, instances of peculiarities quite as amusing.

A learned conveyancer, still living, although retired from practice—conspicuous, as well for his profound learning and vast abilities as for his personal eccentricities—it might have been expected would have figured in this part of our work. Many considerations have disinclined us to this course, one of which is an apprehension of detaining the reader too long from other matter, we trust equally interesting, and we believe more useful. With the two following anecdotes—for the authenticity of one of which we can vouch, and we believe the other to be correct—both of which relate to this learned gentleman, we shall conclude.

One day he was going from the Temple into Bridge Street. When he had got about half way down one of the courts, through which his road lay, he heard a

door that he had just passed, open, and a woman's voice loudly vociferate—"Halloo! here! stop! Clothes! heigh!" On looking round, he saw a woman standing at the door, who beckoned to him. He turned round indignantly, and was proceeding on his way, when a man exclaimed to him, "Why, old Moses, are you deaf? don't you hear the woman calling to you?" On another occasion he was mistaken for a character less reputable than that of a jewish dealer in decayed apparel. He had been requested by some of his family, to bring home with him one evening, from chambers, a child's hat and a pair of shoes. As he was in the habit of carrying home papers every evening in his bag, in this receptacle did he place the articles required. When he had reached the churchyard, in Portugal Street, he was accosted by the watchman: "I say, Mister, what ha' you got in that 'ere bag o' yourn?" "Got, got," exclaimed the learned conveyancer, "why, I've got my papers to be sure." "Ah! that's very true, I d' say," replied the old Dogberry. "But come along o' me, and we'll see what your *papers* look like!" All remonstrances were useless, and Mr. —— was compelled to accompany the trusty guardian of the night to the watchhouse, which is a few doors off. When they arrived, the watchman took the bag—opened it—put his hand in, and exclaimed with a look infinitely *knowing*, as he drew forth the little cap, "ah, *nothing* but papers; I *thought* so." Down went his hand again, out came the shoes, "ah! *nothing* but papers, I wor *sure* o' that." He then told the enraged lawyer, that he must stop there till he could give a good account of himself; but at last, yielding to his entreaties, allowed him to send for bail. He consequently sent to Lin-

coln's Inn, and when some of his learned friends arrived, they found the incarcerated conveyancer seated in the chair of the night watch, advising on a ponderous abstract which was stretched on the table before him!

CHAPTER IV.

THE BAR.

The Learning of the Bar—Legal Rakes—Inns of Court in the Olden Time—Sir John Davies, Mr. Justice Burnet, and Mr. Justice Shallow—Gray's Inn in the Nineteenth Century—Avarice of Lawyers—their Hostility to Innovation—Independence of the Bar—Importance of the Character of the Bar—Foreign Bar—Professional Etiquette and the Circuit Court—Social Intercourse of the Bar—Composition of the Bar—The Bar and the Press—Expenses, Profits, and Labors of Lawyers—Lawyers in Society.

We do not propose, in this place, attempting anything like a complete essay on the present condition of the English bar. We intend simply to consider some charges which have been advanced against its character, and to bring together such facts as we consider will best serve to illustrate its more prominent features.

We hear, in modern times, woful complaints that, in the amount of legal knowledge, the bar of the present day is greatly inferior to that of its predecessor. "The professional learning of the bar, as a body, is sensibly inferior to that of past times."* "A considerable portion of the junior members," the same re-

* Park's Contre-Projet to the Humphreysian Code, p. 57.

spectable writer observes, "are, as everybody knows, political economists, editors of journals and reviews; —French, German, Italian, Spanish, Portuguese scholars—theatrical critics—politicians—hangers on of the upper circles—roués—anything, in short but profound, or even well-read, lawyers." That a man should not be a well-read lawyer because he edited a review, &c.—read Goethe in German*—had formed a judgment on the relative merits of Macready and Charles Kean—was a warm conservative, or a fierce radical—talked nonsense at H——— house—or visited the cider-cellars, and abstracted knockers from Brompton Square—appears rather a startling proposition. That our old lawyers were something besides lawyers we have already shown—that our modern lawyers are rakes and not law-read lawyers we utterly deny: causes to which we have, in another place, adverted have tended somewhat to affect the quality, though by no means to diminish the quantity of law learning. The lawyer of the present day is less scientific than the lawyer of the past; but, in the amount of his reading, is no way inferior. One the of most eminent pleaders of our day has declared that students now enter pleader's chambers far better lawyers than they used formerly to leave them. And the reason is clear. Although the bulk and uncertainty of law has increased, and is increasing, our methods of acquiring legal information have much improved. Vast service did Sir Wm. Blackstone effect for his profession by his incomparable Commentaries—he has smoothed the path of the legal student to a degree which we can

* The advantages of a knowledge of German, to a philosophical lawyer, is acknowledged by Mr. Park. Pref., p. xvi. See, also, p. 87—174.

hardly appreciate, to whom the old way is unknown. We do not refer to the "blue-bottles," as the lounging pupils in a barrister's chambers are elegantly denominated, when we declare that, in amount of reading, in pertinacious industry, the lawyer of our own times is inferior in nothing to his predecessors.

As to the charge of rakishness ignorance has advanced against the modern bar, we can only reply that, if true, it would prove no deterioration. But it is not true. Read the account which Fuller has given of our legal universities in former times. "At the Innes of Court," says Fuller of the 'Degenerous Gentleman,' "under pretence to learn law, he learns to be lawlesse; not knowing by his study so much as what an execution means till he learns it by his own dear experience.—Here he grows acquainted with the Roaring Boyes; I am afraid so called by a fearful *prolapsio*, *here* for *hereafter*. What formerly was counted the chief credit of an oratour, these esteem the honor of a swearer, pronunciation, to mouth an oath with a graceful grace. These, as David saith, 'cloath themselves with curses as with a garment,' and therefore desire to be in the latest fashion, both in cloathes and curses."

Some of our great old lawyers were as great young rakes. Sir John Davies, attorney-general in Ireland to James I, one of the most eminent lawyers of his day, when a student, "interrupted the quiet of the town by his misdemeanors, for which he was fined, and by disorders, for which he was removed from commons." Anthony à Wood tells us of this same young rake—"That he, being a high spirited young man, did, upon some little provocation or punctilio,*

* Martin, as well as Davies, appears to have been a poet, and

bastinado Richard Martin, afterwards recorder of London, in the common hall of the Middle Temple, while he was at dinner. For which act being forthwith expelled, he retired for a time in private, lived in Oxon in the condition of a sojourner, and followed his studies, though he wore a cloake."*

Mr. Justice Burnet, a son of the celebrated Bishop of Salisbury, was also a dissipated templar, and belonged to the well-known gang of the Mohocks, mentioned in the "Spectator." In earlier times, too, when Justice Shallow "lay at Gray's Inn," and fought "Sampson Stockfish, a fruiterer, behind Gray's Inn," and "heard the chimes at midnight," the "swash bucklers in the Four Inns of Court," were renowned above "all the cavalcroes about London." The strict league that of old subsisted between the Temple and Alsatia was of the date of Coke upon Littleton—the era of profound law. These facts are sufficient to show that dissipation does not belong peculiarly to the modern race of lawyers.

We are far, however, from wishing that it should

so humorous was he, that he was wont to keep the hall table "in a roar." His wit, we are told, delighted exceedingly that pedantical buffoon James I; and it has been suggested that envy at his having attained the royal favor, was the "provocation" mentioned in the text.

* In Gray's Inn hall, not very long ago, a scene stil more disgraceful took place. Just before dinner began, one of the Irish students entered the hall, his eyes bearing evidence to the fact, that he had not long before been worsted in a pugilistic encounter. He was followed by his victorious antagonist, a bricklayer, with his hod on his shoulder. Both parties had evidently been sacrificing to Baccus; but unfortuuately, the benchers making no allowance for this circumstance, ordered them into the custody of the police.

be thought we hold our masters in law-learning to deserve imitation in these their follies, or adduce custom in justification of error. In proof that our views are very different, we will, at the risk of tediousness, insert the following extract from Ascham's Schoolmaster. "It is a notable tale," observes the old pedagogue, "that old Syr Roger Chamloe, some time chief justice, would tell of himselfe. When he was auncient in an inn of court, certeine yong Jentlemen were brought before him to be corrected for certeine misorders: and one of the lustiest sayde, 'Sir, we be yong Jentlemen, and wise men before us have proved of all factions; and yet those have done full well.' This they sayde, because it was well known that Syr Roger had been a good fellow in his youth. But he answered them very wiselie. 'Indeed,' saith he; 'in youthe I was as you are now, and I had twelve felloes like unto myself; but not one of them came to a good end. And, therefore, foloe not my example in youth, but foloe my counsel in age, if ever ye think to come to this place, or to theis yeares that I am come unto, lesse ye meet either with povertie or Tiburn in the way.'" "If I had listened," said Mr. Justice Buller, to a youth of sixteen, "to the advice of some of those who called themselves my friends, when I was young, instead of being a judge of the court of King's Bench, I should have died, long ago, a prisoner in the King's Bench."

Another charge that it has delighted malice to bring against the bar is, avarice—a spirit of cupidity—a thirsty love of gain. How far this charge can be justified, may be seen by comparing their conduct and that of the medical profession, in reference to the New Poor Law. Although this measure

has reduced, to a very considerable amount, the fees of counsel at the sessions (the losses of some of the session leaders has been estimated at several hundreds a year), yet, taking them as a body, they have supported it; whilst the apothecaries and surgeons, whose profits have also been curtailed and who have no longer been permitted to *neglect* the poor at the rate of so much a head, have been busy and prominent in getting up petitions—assembling public meetings—putting in motion all the petty machinery of agitation to frighten the legislature into a repeal of the obnoxious act. Indeed, the joke of the avarice and cupidity of the lawyer is now seldom heard, except on the stage, where every "parson" is a fool, every "mayor" a glutton, and every "doctor" a quack and a cheat. Some of the scandal in which our profession has been involved, has originated in the shabby tricks of a few, and more in the *badinage* of the many. Serjeant Davy was once accused of having disgraced the bar by taking *silver* from a client. "I took silver," he replied, "because I could not get gold; but I took every farthing the fellow had in the world, and I hope you don't call that disgracing the profession."

The bar, or, perhaps, we should rather say, lawyers generally, have also been accused of hostility to the cause of improvement—they have been represented as upholding abuses, because, in the maintenance of such their interest consists. This charge is, in some part, true; and, in great part, false. That lawyers are, as a body, unfriendly to innovation, nobody can deny; but, that they are so from notions of a mercenary character, we cannot admit. Accustomed, daily and hourly, to be concerned either in the study or the

administration of a certain system, and finding that system sometimes, indeed, cumbrous, and often expensive, still capable of providing for every combination of circumstance, they naturally become attached to it, and indisposed to its alteration in any way. Again, knowing by experience (we appeal to every practical lawyer to testify to this), that every change that has been effected in this system, whether touching its principles or its details—however beneficial, has been purchased by the sacrifice of much of the certainty which previously attached to its operations—they are on these grounds also unwilling to assent even to its improvement. There can be no doubt that lawyers, especially of the old school, were, and are, to a certain extent, anxious to see preserved even the very forms and letter of the law. This is, with equal ease, to be accounted for. They think that *law makers* should not lightly meddle with forms—indeed, not meddle with them at all, unless they were actually an hindrance to substantial justice. And this, because they knew that if any forms were to be continued, old forms, known and understood, are the most preferable; and if no forms were to be preserved, then all the reasons arising from discretionary justice would immediately ensue.

There is no doubt, however, that this love of "what has been" has in some cases been rather ludicrously manifested. A clerk in chancery, of the days of Cromwell, who had seen with the utmost indifference all the changes in church and state which had occurred in his times, when he was told that some new regulations were to be introduced into the Six Clerks' office, exclaimed, "Ah! if they come to strike at *fundamentals*, where will they stop?" The great Lord

Clarendon, in his Autobiography, mentions a circumstance which illustrates this point in the legal character. The great fire of London happened at a time of year when most of the lawyers were out of town. When the conflagration reached Serjeant's Inn (Fleet Street) and the Temple, much property was destroyed because the owners were absent, and their chambers were locked. "Many gentlemen of the Inner Temple," says Clarendon, "would not endeavour to preserve the goods that were in the lodgings of absent persons because they said *it was against the law to break into any man's chamber*." This is more absurd than the old story of an Oxford man saving, at the risk of his life, a fellow collegian from drowning, and then apologising for the *liberty he had taken*, as he had not had the pleasure of having been introduced to him! Roger North gives also an absurd instance of the lawyers' attachment to mere form. In his days the court of Common Pleas used to sit in Westminster Hall, close to the great door, in order that suitors and their train might readily pass in and out. When the wind was in the north, this situation was found very cold, and it was proposed to move the court further back, to a warmer place. "But the Lord Chief Justice Bridgman," says North, "would not agree to it, *as against Magna Charta*, which says that the Common Pleas shall be held in *certo loco*, or in a certain place, with which the distance from a certain place is inconsistent, and all the pleas would be *coram non judice*. * * That formal reason hindered a useful reform; which makes me think of Erasmus, who, having read somewhat of English law, said, that the lawyers were 'doctissimum genus indoctissimorum hominum.'" One of the most extraordinary reasons which any

lawyer has alleged against effecting law reforms is that assigned by the chancellor d'Augesseau. He was once asked by the Duke de Grammont whether he had ever thought of any regulation by which the length of suits and the chicanery practised in the courts could be terminated. "I had gone so far," said the chancellor, "as to commit a plan for such a regulation to writing; but, after I had made some progress, I reflected on the great number of *avocats*, attorneys, and officers of justice, whom it would ruin: compassion for these made the pen fall from my hands. The length and number of law suits confer on gentlemen of the long robe their wealth and authority; one must continue, *therefore*, to permit their infant growth and everlasting endurance." We do not believe that it is for any such reason that lawyers usually entertain a dislike to alterations in the law. We must also observe on this subject, that some of the most important measures which have from time to time been perfected for the diminishing litigation, have been the work of lawyers. The Law-Amendment Act passed not long ago, and by which a variety of useful reforms were effected, is known to have been the work of Mr. Baron Parke. The changes that have taken place in our system of Real Property law, were recommended by a commission composed of lawyers, and received, before they were passed into laws, the cordial approbation of the great majority of the practising lawyers of the kingdom. When the plan for establishing a General Registry of Deeds was agitated some few years back—the intention of which was to facilitate the investigation of titles, and, consequently, diminish the expenses incident to the transmission of property—a large body of the conveyancers, whose

profits it was intended most materially to reduce, declared themselves friendly to its principles.

It is known, also, that Mr. Preston, at the instance of Lord Ellenborough and Sir James Mansfield, sketched the outlines of a measure of a similar character; but the ministry of that day declined undertaking its introduction, and it consequently never saw the light.

It is a very remarkable circumstance that a bill which was introduced into the house of commons in 1770, for the purpose of increasing the number of cases in which defendants might plead the general issue, although its object was to confine special pleading within very narrow limits, yet received the hearty support of Mr. Wallace, himself a mere special pleader; while it was vigorously opposed by Mr. Dunning, who was a special pleader, and something besides.

In reference to the law of real property, we have also to observe, that Lord Kenyon prepared a bill for the purposes of its amendment; but on some objections being made to it, he, in a fit of vexation, destroyed the draft.

Lord Bacon drew up a proposal "for Amending the Laws of England," which comprehended a great change in both the corpus and the spirit of our laws. To this subject he states a great deal of attention had been paid by Lord Hobart, himself, Mr. Serjeant Finch, Mr. Heneage Finch, and other eminent lawyers. Sir Edward Coke refers to this plan in terms of high approbation (4 Rep. Pref.)

In Andrew Horne's "Mirrour of Justice," an ancient law-book of the date of Edward I, there is a section styled "De Abusion," in which the author

enumerates one hundred and fifty defects in the common law, and states that there are others besides.

In the "Eight Centuries of Reports," by Judge Jenkins, we find mentioned many "'Abuses of the Law," and amongst these are enumerated common recoveries, and the too rigorous construction of statutes.

With such evidence as this, that there is amongst the great body of lawyers no insuperable dislike to careful and well-considered reforms in our law, we may ascribe to personal pique, or individual selfishness, the opposition which *some* lawyers have offered to changes the most prudent, nay, the most necessary. "You know not what you are doing," said an eminent lawyer to a law reformer; "if you carry this point, what is to become of all the books;" he added, with a sigh, "what is to become of *my* books."

The charge which has been so often made against the bar, of being the subservient instrument of the minister of the day, is clearly disproved by its present* position, in reference to the existing ministry. Our ministry is Whig, our bar is Conservative. In times past when a Tory Palinurus was at the helm, a large proportion of the bar belonged to the opposition. The names of Romilly, Pigot, and others, will readily occur to our readers. In truth, it is to the attorneys, and the world out of doors, thar the bar look for patronage; it is the great house-building, money-lending, will-making, land-buying public, that the bar apostrophises in the language of the grateful poet,

"O et praesidium et dulce decus meum."

* 23d July, 1839.

In our chapter on "Advocates," further information will be found respecting the services which the bar have rendered, in abating the pride and insolence of tyrannical and overbearing judges. Upon the boldness and intrepidity of our bar, depends in a great degree, the purity of the administration of justice. Certainly, however, the boldness has been pushed to the borders of impudence. In the reign of George II, one Crowle,* a counsel of some eminence, made some observation before an election committee, which was considered to reflect on the house itself. The house accordingly summoned him to their bar, and he was forced to receive a reprimand from the speaker on his knees. As he rose from the ground, with the utmost *nonchalance* he took out his handkerchief, and wiping his knees, coolly observed, "that it was the dirtyest house he had ever been in his life."†

If we look to the darker periods of our history, we find how necessary it is that the language of counsel should not be limited by the standard of propriety which a chief justice thinks it right to set up. Wallop, a barrister in the reign of James II, was engaged in defending some persons accused of publishing a statement that Lord Essex had been murdered in

* Crowle was a great humourist. On the circuit somebody asked him if the judge was not *just behind.* "I don't know was his reply, "but sure I am that he was never *just before.*"

† Wilmot, afterwards Sir Eardly, once appeared at the bar of the house of commons, on a contested election. He received, a severe and haughty reprimand from Pitt (the future Lord Chatham), who told him he had brought there all the pertness of his profession, and being forbidden by the speaker from making any reply, he flung dowu his brief, and never would return there again.

the Tower. In the discharge of his duty he put some questions to the witness, which met with the disapprobation of Jeffreys, who bawled out, "Nay, Mr. Wallop, you shan't hector the court out of their understandings." "I refer myself," replied Wallop, "to all that hear me, if I attempted any such thing as to hector the court." "Refer yourself to all that hear you?" replied Jeffreys: "refer yourself to the court; 'tis a reflection on the government, I tell you, your question is, and you shan't do any such thing, while I sit here, by the grace of God, if I can help it." Wallop, on this said, "I am sorry for that; I never intended any such thing, my lord." "Pray behave yourself," rejoined the irascible judge, "you must not think to puff or swagger here. We have got strange notions now a-days," he afterwards observed, "that forsooth men think they may say any thing because they are counsel."

Mr. Serjeant Hill was distinguished by his manly, though respectful bearing towards the court. Seeing the plaintiff in an action in which he was counsel for the defendant, sitting beside the judge on the bench, he rose, and declared "that he would not proceed while the indecent spectacle continued, of a party sitting beside a judge who was about to try his cause."

Mr. Curran, than whom a more intrepid advocate never existed, was one day exerting himself with more than ordinary zeal in the cause of a client, when the presiding judge called out to the sheriff to take into custody any one who should venture to disturb the decorum of his court. "Do, Mr. Sheriff," exclaimed Curran, unawed, "go and get ready my dungeon; prepare a bed of straw for me; and upon that bed I shall to-night repose with more tranquility than I

could enjoy were I sitting on that bench with a consciousness that I *disgraced it.*" We cannot forbear citing another instance of the undaunted spirit of this accomplished advocate. In arguing some case before Mr. Justice Robinson, celebrated for his talents as a political pamphleteer, and his attachment to despotic principles, Curran observed, "that he had never met the law as laid down by his lordship in any book *in his* library." "That may be sir," said the judge contemptously—"but I suspect that your library is very small." The young barrister indignantly replied, "Yes, my lord, my library may be small, but, I thank God, you will find in no part of it the wretched productions of the frantic pamphlet-writers of the day. I find it more instructive," he added, "to study good books, than to compose bad ones; my books may be few, but the title pages give me the writers' names: my shelf is not disgraced by any such rank absurdity, that their very authors are ashamed to own them." "Sir," exclaimed the judge, in a furious tone, "you are forgetting the respect that you owe to the dignity of the judicial character." "Dignity, my lord," retorted Curran; "upon that point I shall cite you a case from a book of some authority with which you are perhaps not unacquainted: —A poor Scotchman upon his arrival in London, thinking himself insulted by a stranger, and imagining that he was the stronger man, resolved to resent the affront and taking off his coat, delivered it to a bystander to hold; but, having lost the battle, he turned to resume his garment, when he discovered that he had unfortunately lost that also—that the trustee of his habiliments, had decamped during the affray. So, my lord, when the person who is invested

with the dignity of the judgment-seat, lays it aside for a moment, to enter into a disgraceful personal contest, it is vain, when he has been worsted in the encounter, that he seeks to resume it—it is in vain that he endeavors to shelter himself behind an authority which he has abandoned." The judge cried out—"If you say another word, sir, I'll commit you." "Then, my lord, it will be the best thing you'll have committed this year." The judge did not keep his threat—he applied, however, to his brethren to unfrock the daring advocate, but they refused to interfere, and so the matter ended.

Erskine, in the Dean of St. Asaph's case, exhibited the proud spirit of an English counsel, who knows that in the defence of his client, he is justified in using every degree of freedom which does not infringe on the respect due to the court. Mr. Justice Buller, after the jury had, through their foreman, stated their verdict, declared, that its effects, as expressed, would be different from the obvious intention of the jury: Mr. Erskine, however, insisted that the verdict should be recorded as it was stated by the foreman.

Buller. Let me understand the jury.

Erskine. The jury do understand their verdict.

Buller. Sir, I will not be interrupted.

Erskine. I stand here as an advocate for a fellow-citizen, and I desire that the verdict may be recorded as given by the jury.

Buller. Sit down, sir, remember your duty, or I shall be obliged to proceed in another manner.

Erskine. Your lordship may proceed in what manner you may think fit; I know my duty as well as your lordship knows yours. *I shall not alter my conduct.*

To every reflecting mind, the importance of the bar's being filled by men of high moral character, is at once apparent. No case can become the subject of litigation, without the sanction of counsel. How necessary it is, then, that those by whose advice the vast expenses of legal proceedings are incurred, should be superior to the temptations which the prospect of emolument affords. Again trusting to the honor of the counsel, the court frequently accept their statements of the contents of documents, such as affidavits, without requiring their perusal at full length. Counsel also, with a mutual confidence in each other's character, constantly enter into arrangements, which save their clients both time and money, such as waiving strict forms, making admissions, &c. Thus does the character of the bar tend to introduce economy and facility into the administration of the law.

In England, this character is maintained by the influence of public opinion, enforcing a system of etiquette, established by the mutual understanding of the bar. On the continent, the bar is under the direct supervision of government, who have framed a variety of regulations, to prevent the advocate from cheating his client and deceiving the court.

In Prussia, the advocate is bound to produce his correspondence with his client, that is, virtually, the instructions he has received from him, in order that the judge may be satisfied that no material fact is kept back. When any complaint is lodged in a court, it is the judge, and not the advocate, who determines "what steps are to be taken, what proofs are to be adduced."

There are also in most of the German States, tables of fees, payable to the advocates, which are prepared

and signed by the judges. There, as has been remarked, "the social position of the advocate is neither independent nor profitable." In modern Rome, no one is admitted as an advocate who is not of respectable birth, and who cannot obtain a certificate of good morals from the police!

The strictness with which the etiquette of the bar is maintained in England, is owing, in a great measure, to an important institution, whose very name is possibly new to some of our readers: we mean "the Circuit Court."

On the principal circuits, it is customary to hold, at certain intervals, a court for the trial of all breaches of professional etiquette. The court is held at the circuit table, after the cloth is cleared, and the junior member of the circuit presides as recorder; the others, not being prosecutors or culprits, acting as jury.

The trial takes place on presentments made by any member of the circuit. If the accused is found guilty, he is fined, and the penalty is paid into the wine fund. Formerly the fine generally was one or more bottles of wine, but now is usually in money, varying from 2s. 6d. to a guinea, and sometimes it is higher. Some of the presentments are absurd enough, and are intended only to promote mirth and good humor. An eminent advocate, who possesses the same name with a famous actor of his day, was presented for having inserted the following outrageous puff on himself, in the ——— paper:—"Mr. ——— delighted us exceedingly on Monday. We do not remember to have seen so much genuine wit displayed ("on the stage," was erased) without the slightest coarseness. He is the cleverest individual, in his line, whose performances we have ever witnessed." A fine of half-a-

crown was forthwith imposed on this vain-glorious paragraph writer. The papers announced the execution of one John Smith, who had been convicted of horse-stealing. On whatever circuit there is a Mr. John Smith, he is immediately condoled with on being hanged, and the price of this condolence is fixed at a certain sum. When Lord Abinger was at the bar, he presented Mr. Richardson, a great pleader, and afterwards raised to the bench, for being "the most eminent special pleader of the day!" So grave an offence demanded a severe punishment, and Mr. Richardson was, accordingly, amerced in a dozen of wine, which he paid with the greatest possible good humor.—Other offences against the circuit laws are shaking hands with an attorney, drinking tea with his wife, dancing with his daughter, calling him in open court "a highly respectable and worthy individual," &c.—To be present in an assize town before the commission-day, is also a breach of this code, punishable accordingly.

When, however, it is considered how highly essential to the respectability of the bar it is, that no system, even approaching to "huggery," should be countenanced, it will at once appear that these punishments, absurd as they may at first sight seem, still have a useful tendency. They serve effectually to prevent any of those petty arts by which vulgar and cunning pettyfoggers might attempt to obtain practice. It may not at first sight appear how visiting an assize town a day before the commission is opened should be regarded with severity; but when it is recollected that some counsel, of the kind of which we have been speaking, might possibly pursue such a practice, and by thus being the first in the field obtain an undue

advantage over the rest of their brethren, we shall at once see the benefit of the rule. No one contributed more to the pleasure of the circuit table, than the late Mr. Jonathan Raine.* "Jonty and fun," was an invariable toast; and we may appeal to such of our readers as have ever shared in the amusements of the circuit table, whether they have not found that such a *réunion* has a direct tendency to bring the leaders of the profession in contact with their juniors, and to produce a feeling of harmony and good-will amongst the bar, which is productive of the best effects.

Without desiring in any degree to act the part of panegyrists, there is one point in the character of the bar on which we must make a few remarks. There is in that profession less of jealousy and envy than in any other. The first time the neophyte joins a circuit table, he is always welcomed with warmth and kindness; and this promotes a community of regard which has tendered much to raise our bar to the proud situation it holds in the country. The conduct of leaders to their juniors is, with scarcely an exception, uniformly friendly. "Arrogance," as Owen Feltham observes, "is a weed that ever grows upon a dunghill." The biography of our lawyers afford many instances of the advantages young men, who have afterwards risen to eminence, derived, in the early

* Mr. Raine was blessed or cursed with stentorian powers of speech. Chief-baron Thompson was once trying causes at York, and hearing a great noise at the other end of the hall, where the crown causes were going on, called out, "Who's that man that's making such a noise, bailiff? Turn him out if he don't hold his tongue." "Oh! my lord," said Mr. Topping, "it's only a friend of ours pleading at the other end of the court!"

part of their life, from the fostering encouragement which they received from some of the "fathers of the bar." Noy, the attorney-general, took great notice of Sir Mathew Hale when a student, directing and encouraging him in his studies; so much so that Hale was commonly called "Young Noy." Serjeant Maynard used to say, that "he rose mainly, at first, by being looked upon as Mr. Noy's favorite." "To the friendship of Selden," says Clarendon, "Vaughan owed the best part of his reputation." Lord Guilford was indebted to the attorney-general, Sir Jeffrey Palmer, and Lord Somers to the solicitor-general, Sir Francis Winnington, for the eminence to which they respectively attained in after life.

There is, in a custom pursued in most of the circuits, an evidence that this feeling is still alive:—whenever a junior acquires a certain quantity of business, and his reputation has become to a certain extent established, some queen's counsel sends him a bag. This is both a token of goodwill, and (when known) a species of recognition of his right to be considered as "a rising young man."

In former times the intercourse amongst the various members of the bar was greater than it is at present; and when we speak of former times, we go back no further than the last age, so fruitful as it was in accomplished advocates and learned lawyers. Dr. Dibdin, the well known bibliographist, who was originally intended for the bar, says, "Towards evening, it was the fashion for the leading counsel to promenade, during the summer, in the Temple Gardens. Cocked hats and ruffles, with satin small-clothes and silk stockings, at this time constituted the usual evening dress. Lord Erskine, though a good

deal shorter than his brethren, somehow always seemed to take the lead, both in place and in discourse, and shouts of laughter would frequently follow his dicta."

In those days, when *clubs* were unknown, a considerable portion of leisure was passed, by most individuals belonging to the middling and upper classes of society, in coffee-houses. The names of "Nando's," "Alice's," "Serle's," "the Grecian," and "the Bedford," are not yet forgotten by the bar, as the places usually resorted to by lawyers in those times. It was at Nando's that Lord Thurlow obtained his first brief. "When I resided at Dean-street," says Mr. Cradock, "I frequently passed an evening with my friends at Nando's coffee house, where I met with Thurlow, Mr. Wheeler, and many others from the Temple; for, as the phrase went, there was no one who could supply coffee or punch better than Mrs. Humphries; and her fair daughter was always admired at the bar, and *by* the bar.

Dr. Harrowby's description of Foote, who was a member of the Temple about a hundred years since, will give us a tolerable notion of the conduct and appearance of the young students, who frequented these places of entertainment. "He came into the room dressed out in a frock suit of green and silver lace, bag wig, sword, *bouquet*, and point ruffles, and immediately joined the critical circle of the upper end of the room. Nobody knew him. He, however, soon boldly entered into conversation, and by the brilliancy of his wit, the justness of his remarks, and the unembarrassed freedom of his manners, attracted the general notice. The buz of the room went round, 'Who is he? whence comes he?' To

which nobody could answer, until a handsome carriage stopping at the door to take him to the assembly of a lady of fashion, they learned from the servants that his name was Foote, that he was a young gentleman of family and fortune, and a student of the Inner Temple."

Before the constitution of the Bail Court, under Casberd's Act, the great leaders of the bar used to wait at Alice's coffee-house, until the full court had assembled. "These meetings," observes a periodical writer, "formed a scene of most enviable social intercourse. Men of the first eminence, Erskine, Gibbs, Garrow, Park, Jekyll, Dampier, in short, all that were eminent in the profession, passed their time in free conversation on all interesting subjects; the juniors were not excluded, or kept at a distance, but communicated freely their observations and opinions; and thus the knowledge of powers which would have otherwise continued latent, was acquired, sentiments of kindness and respect were created, and useful hints and instructions to the inexperienced liberally imparted."

Upon the northern circuit, in former days, there was nothing more remarkable than the terms of intimacy, in which the counsel who went it lived together. The following anecdote will illustrate our position. Mr. Wood and Mr. Holroyd (both of whom were afterwards raised to the bench) when crossing Finchley common, on their way to join the northern circuit, were stopped by a gentleman of fashionable appearance who rode up to the side of the carriage, and begged to know "what o'clock it was." Mr. Wood, with the greatest politeness, drew out a handsome gold repeater and answered the question; upon

which the stranger drawing a pistol, presented it to his breast and demanded the watch. Mr. Wood was compelled to resign it into his hands, and the highwayman, after wishing them a pleasant journey, touched his hat and rode away. The story became known at York, and Mr. Wood could not show his face in court, without some or other of the bar reminding him of his misfortune, by the question, "What's o'clock, Wood?"

By the etiquette of the profession, no peer can practise at the bar—and for a very obvious reason. Every peer is a member of the court of supreme judicature, and might, therefore, be called on to decide the very case in which he had previously acted as an advocate.

There is also an understanding, that any person who has held any superior judicial appointment, shall not practise. Recorders of municipal corporations —Welsh judges—the chief justice of Chester, and the chairman of courts of quarter sessions, did not, and as to such offices as yet survive, are not included in this rule. There were considerable doubts entertained in the profession whether Sir Edward Sugden, after he had been lord chancellor of Ireland, could resume his practice at the bar. The general feeling, we believe, inclined to the negative. It is believed that Sir Edward Sugden would not have been considered as eligible to practise, on the ground of being a privy councillor. When Lord Bacon was sworn of the privy council, in the reign of James I, it was with a previous understanding that, "though in general he should cease to plead as an advocate, his permission to give counsel in causes should continue; and that if any urgent or weighty matter

should arise, that he might, with the king's permission, be allowed to plead."*

Lord Erskine had an opinion that a keeper of the great seal might, after he had left the woolsack, return to the bar, although a lord chancellor could not; and used to express his regret, that he had, in order to fulfil a prophecy of his mother's, accepted the title of "Chancellor," as had he only assumed that of "Lord Keeper," he could have resumed practice, when the Whigs went out of power.' Erskine was, however most clearly in error: there is no distinction, except in name, between the two offices.

In olden days, when judges held their offices during pleasure, many instances may be found of judges removed from the bench, returning again to the bar. Chief Justice Danby, who, in the reign of Edward IV, was deprived of his seat on the bench, practised as a counsel, until Henry VI, restored him to his chief justiceship. Sir Robert Heath, chief justice of the Common Pleas, in the reign of Charles I, who was removed from the bench, in consequence of having given his opinion in favor of ship money, applied himself, after his expulsion, to chamber practice whereby he acquired a considerable fortune.

Widdrington, one of the lords commissioners of the great seal during the protectorate, desiring after the king's death, to be excused acting in the commission, the house of commons, "to manifest their respects," says Whitelocke, "for his former services ordered that he should practise *within the bar.*" Sir Francis Withens, a puisné judge of the King's Bench, who was dismissed by James II, a day or

* Montagu's Life of Lord Bacon, p. 189.

two after his dismissal, appeared at the bar as a practiser.

Sir Francis Pemberton, also a puisné judge of the King's Bench, in less than a year after his appointment, "received his quietus." He returned to the bar, where he practised, until he was raised to the chief justiceship of the King's Bench.*

The bar of the present day is composed for the most part of young men, belonging to respectable families—to that minor aristocracy which is interposed in England, between the patrician gentry and the middle or tradesmen classes. There are some indeed to be found in its ranks, whose origin is more lofty—others, whose descent is more humble: some who can claim kindred with the proudest blood in England—the Cavendishes—the Russells—the Ashley Coopers—the Talbots, &c. It is, however, a great mistake, to suppose that such individuals are to any considerable extent advantaged by their high connections. They may in this way obtain colonial attorney and solicitor generalships, and appointments of a similar character, or auditorships to private estates; but, in the eyes of the solicitors, those gentlemen by whom practice and its golden fruits are distributed, so far from ancient blood being a recommendation, it would most probably have an influence in a precisely contrary direction. They would, if we mistake them not, with far greater apprehensions entrust a brief to such as have so many inducements to idleness, and to whom severe and lengthened toil has been, if not unknown, still not an habitual exercise, than those who have no such temptations to resist, and to whom

* 2 Show. 94.

labor and application have been, from their earliest years, familiar. We say, then, that aristocratic connections so far from availing anything to the young advocate, rather tell against him: but, it should be added, maugre these prejudices, business and reputation are often attained by such as we could cite living instances to show.

A large proportion of the bar is composed of the sons and relatives of solicitors. "The bar is thus degraded," cry some. We cannot think so. The solicitors of the present day, as a body, take rank—we mean social rank—with the bar, as a body. The bar, indeed occupies—and rightly—a higher position in the eyes of the public; it is, for the most part, composed of men more highly educated and more deeply learned; but as society does not recognise the distinctions observed in Westminster Hall, nor hold a silk gownsman more worthy her favors than a stuff gownsman, or a stuff gownsman than a solicitor, no such degradation can possibly exist.

There are a class of men at the bar to whom we must now be permitted to advert. We allude to those whom that dire necessity, which knows no law, has compelled to make literature their support in their way to the bar. It is well known that a considerable number of the reporters for the public press, are bar students, and that many of the most eminent men by whom our profession has been adorned, owed their subsistence, during their studentship, to the same resource. The present Mr. Serjeant Spankie was a reporter on the "Morning Chronicle;" so also was Sir John Campbell. The late Master Stephen was also employed in a similar capacity. Lord Plunket was a reporter for, and afterwards editor of, the

"Dublin Patriot." The proceedings at the bar of the house of lords, during the progress of the Queen's trial were reported for the "Times" by an eminent special pleader of our day.

Some years ago the benchers of Lincoln's Inn passed a resolution, on the motion of Mr. Clifford, of O. P. notoriety, the effect of which would have been the exclusion from the society of all persons connected with the public press. A petition was presented to the house of commons, by a gentleman against whom this illiberal resolution operated, and so severely was the conduct of the benchers condemned in the course of the debate that ensued, that they were induced to retrace their steps. During the debate, Mr. Sheridan stated, that amongst those who reported the proceedings of the house, there were no less than twenty-three graduates of the Universities of Oxford, Cambridge, Dublin, and Edinburgh. He alluded to the cases of Mr. Burke and Dr. Johnson, as showing how idle it was to connect the notion of a reporter with any thing like a disqualification for the highest offices of the state. Mr. Stephens followed in a speech, in every way creditable to him. He declared that he had been a member of Lincoln's Inn for five-and-thirty years, and not only had had no share in framing the bye-law in question, but considered it as replete with injustice—a scandal rather to its authors than its objects. "I will suppose," he said, "the case of a young man of education and talent, contending with pecuniary difficulties—difficulties not proceeding from vice, but from family misfortunes. I will suppose him honestly meeting his obstructions with honorable industry, and exercising his talents by reporting the debates of this house, in order to attain to a profes-

sion. Where, I ask, is the degradation of such an employment? Who would be so meanly cruel as to deprive him of it? The case, sir, which I have now supposed, was, thirty years ago, my own!" We have been informed, however, that the resolution was rather *declaratory* than *creative*, for a custom had formerly existed of considering reporters, and persons connected with the press, as ineligible for the bar.—And in the case of a learned serjeant, who has since acquired a great reputation as an advocate and as a lawyer, some apprehensions were expressed whether his society would consent to call him, as he was at that time "in the gallery."*

It is a great mistake to suppose that the bar is in modern times more aristocratic than of old. We have, indeed, among us some few eminent men, who have sprung from the lower classes, and have found in "parts and poverty," the pathway to honor. But what are these among so many? And one reason of this is, that in modern days, the Universities have not been so accessible to persons of small means, and humble birth, as formerly. Look, for example, at the case of the great John Selden. His father is described by Aubrey, as having been "a yeomanly man of about £40 per annum." He also is supposed to have pursued the trade of a wheelwright, and to have as-

* Mr. Justice Lawrence, who was in general remarkable for his courtesy, always displayed towards such barristers as were, or had been, connected with newspapers, a roughness altogether opposed to his habitual urbanity. His dislike, however, was, in some degree, justified by the fact, that many of these individuals employed the meanest artifices to obtain practice, and endeavored to acquire reputation by constantly inserting their names in the paper.

sisted his family by his talents as a musician. Selden was sent to Chichester free-school, and, at the age of fourteen, obtained an exhibition, and was admitted fellow of Hart Hall, Oxford. He thus received the best possible education which the age afforded.* Lord-keeper Guilford declared that if he had had £100 a-year, he had never been a lawyer.

Noy left his son £500, and 100 marks a-year, which, it was said, was amply sufficient to bring him up to his father's profession. Lord-keeper North, when a student, was allowed only £60 a-year. Jeffreys had an allowance of £40 a-year, and £10 for clothes.

Again, in former times, success at the bar was the result of some happy "hit," some fortunate event, a leader's being taken ill, an important point's being overlooked, a case occurring in which a knowledge of some recondite branch of law is required, and of which there is only one person at the bar who knows any thing. Those were times in which many men could say, with Lord Mansfield, that they never knew the difference between an income of three hundred a-

* Is it too much to say that individual happiness, though certainly not the public good, is promoted by keeping individuals in their native sphere, rather than by giving them opportunities of rising? If success was always the result of *merit*, this would not be so, but as in but too many cases men deserve, what they do not obtain, it is surely better they should be saved the struggles through which they would have to pass in leaving, though only for a time their own sphere. There was more wisdom than selfishness in the reply of Grosseteste, the celebrated Bishop of Lincoln, when his brother, a person in humble circumstances, asked for some preferment from him:—"Brother, if your plough is broken, I'll pay for the mending of it; or if an ox is dead, I'll buy you another; but a ploughman I found you, and a ploughman I'll leave you."

year, and one of as many thousands. But in our times the case is very different. The young barrister, after he has taken his oaths, and duly apparelled himself in wig and gown, takes his seat on one of the back benches. After having exhibited himself for some time in this position, a friendly attorney entrusts to him "a motion of course," or "a consent brief," by which he has an opportunity of addressing the bench or woolsack for a fraction of a minute, and also of making a certain agreeable entry in his "fee-book." The attorney then, perhaps, confides a more important task to his hands—he discharges his duty with quickness and address—his name becomes known to the judge—on the circuit he obtains a prosecution or two, which introduces him to the notice of the country attorneys—he gets on by degrees, until he obtains a moderate practice—he acquires the favor of a leader, and at last gets spoken of as a *rising young man*—a fortunate death occurs on his circuit—he succeeds the deceased—business flows in on him—he applies to the chancellor for a silk gown, which is given to him, and he leads on his circuit.

Besides, the expenses of admission to the bar, and of the professional education, without which admission is of little value, have of late years much increased. An admired writer on law studies has declared that a clear income of *at least* (the italics are his own) £150, and that managed with the greatest economy, "is generally speaking a *sine qua non* to a successful entrance into the profession." "In our opinion," says the author of an admirable review of the work from which we have quoted, "if the candidate be not blessed with a commanding connection,

he should have enough to keep him for eight or ten years, so as to give him a fair chance, and something to fall back upon should he fail. It would be difficult to go circuit and sessions, buy books and live comfortably for less than three times the income named by Mr. Warren." How strangely do these assertions sound to those who have been taught by precept and example, that in "parts and poverty" lie the secret of success at the bar! Looking to the great men who have from time to time shed light and glory on their age, such assertions appear any thing but reconcileable with fact. Lord Eldon was originally intended for the church. When at Oxford, he was fortunate enough to obtain the chancellor's prize for the best English essay. Considering that henceforth his fortune was made, he was bold enough to persuade a beautiful and interesting girl to elope with him. They were married, and John Scott was regarded as a lost man. The difficulty in which he thus involved himself, compelled him to relinquish all idea of the church, and to enter himself for the bar: he—the son of a coal-whipper at Newcastle—died an earl of the English peerage, in possession of an enormous fortune, and after having for more than twenty-six years presided over the high court of chancery. He says that after he had kissed hands on receiving the great seal, the king said to him, "Give my remembrances to Lady Eldon." He acknowledged his Majesty's condescension, but intimated his ignorance of Lady Eldon's claims to such a notice. "Yes, yes," he replied, "I know how much I owe Lady Eldon. I know you would have made yourself a country curate, and that *she* has made you my Lord Chan-

cellor."* And the old king was right. But where Scott succeeded, how many would have failed? How many, when all the cares and anxieties that are attendant on early marriages, made without regard to prudence in a pecuniary point of view, are pressing on them—

> "Increasing debts, perplexing duns,
> And nothing for the younger sons—"

how many could apply themselves, with the assiduity which they ought, to the study of a difficult profession?

"You charge me eighty sequins," said an Italian noble, to a sculptor, "for a bust that you made in ten days!" "You forget," replied the sculptor, "that I have been thirty years learning to make that burst in ten days."

There is an opinion current in the minds of the public, that the bar is a profession, in a pecuniary sense, highly profitable, and a few instances of immense fortunes which have been made in it, have been pointed to as evidencing the justice of this opinion. Sir Samuel Romilly is said to have realised an income of upwards of £15,000 a year, at the latter end of his life; and in our own days, enormous retaining fees have, on several occasions, been given to counsel. Sir Charles Wetheral is known to have received 7,000 guineas for opposing the Municipal Corporations' Bill at the bar of the house of lords; and it is generally understood that Mr. Serjt. Wilde's retaining fee, in the case of the British Iron Company against Mr. Attwood, was not less than 3000

* Warren the famous special pleader, used to say to his pupils, that "Marriage is a spur to industry."

guineas.* The leader of the home circuit is said to have had 113 retainers during the last (1839) spring circuit. Conveyancing is probably the most profitable branch of the profession; but of late years the profits of the conveyancer have been very much diminished.

We have not many materials for ascertaining the emoluments of our lawyers in early times. In the parish books of St. Margaret's, Westminster, the following entry may be found:—"Also, paid to Roger Fylpott, learned in the law, for his counsel given, 3*s.* 8*d.* with 4*d.* for his dinner." Sir Thomas More estimated his income at £400; but probably some portion of this was derived from his office of under sheriff. Bacon, when attorney-general, made £6000 a-year; and tradition has said that Coke's gains, when filling the same office, were not inferior to those of a modern attorney-general. Brownlow, a prothonotary in the time of Queen Elizabeth, made £6000 a-year. This gentleman used to close his year's accounts with "Laus Deo," and if his profits were unusually large, with "Maxima Laus Deo." This discriminative piety would make us believe that he was a prudent individual. Bulstrode Whitelock possessed a private practice that brought him in £2000 a.year. He stated, as a very uncommon circumstance to have happened to a pleader, that Serjt. Maynard, one of the most eminent lawyers of his day realized, in one circuit, £700. Lord Keeper North, when attorney-general, was in receipt of an income, including his gains from private practice, of £7000 a-year. Sir M. Hale said that £1000 a-year was a great deal for a common lawyer to make; and when

* The fee indorsed on the brief was 1000 guineas.

he heard that one made £2000 a-year, he said, he knew the individual alluded to made a great deal by his city practice, but he doubted if he made so much.

The largest fee given by the bishops to the counsel who defended them, in their trial in the reign of James II, was £20; and the fees altogether amounted to no more than £240 16s. Of the lawyers of the time of the Commonwealth, an old writer says, "Nor are their fees of mean value, three pounds, five pounds, six pounds, being usual, even for making a motion of five or six lines." "Many of them," continues the indignant author, "rise from nothing to great estates, five thousand pounds, six thousand pounds, nay ten thousand pounds, twelve thousand pounds, by the year and purchase baronies and earldoms." The *salaries*, of the law offices of James's time were as follows:—the attorney-general, Sir Francis Bacon, received £81 6s. 8d. Sir Henry Yelverton, solicitor-general, £70; the king's serjeant, £41 6s. 10d. and Henry Martin, advocate for ecclesiastical causes, £20.

In the times of the Stuarts it was customary, especially in the Court of Chancery, to retain, in either side, in every cause, whether involving points of great difficulty or not, a great number of counsel. Ten advocates on one side have been heard in Chancery to speak to a motion of course. There is an anecdote told of Lord Somers, when he was at the bar, which illustrates this circumstance. In a motion which was understood to be of course, six or seven counsel had addressed the chancellor, when Mr. Somers rose, and said that he was of the same side; but that so much had been already said, that he had no room to add any thing; that, therefore, he would not presume to

take up his lordship's time, by repeating what had been so well urged by the gentlemen that went before him." "Sir," said the chancellor (Lord Nottingham), "pray go on; I sit here to hear every body; you never repeat, nor will you take up my time, and, therefore, I shall hear you with pleasure." This practice of retaining many counsel is generally discountenanced by the courts, as tending to increase the expense and protract the settlement of the suit. Consequences, still more injurious, have resulted from this practice. In the case of Mr. Shelley which was argued in the Court of Chancery some years back, all the king's counsel were retained for Mr. Shelley. A cause was tried at Carlisle some time ago, the parties to which were, a noble peer, and the three orphan children of his deceased steward. The peer managed to retain every counsel in the place, and succeeded in obtaining a verdict, by which these poor children were deprived of an estate that was lawfully their own. Upon his decease, his noble successor returned the property, so unjustly acquired, to the orphans, with interest, and the costs of the suit.

In every crown cause in old days, there usually were a legion of counsel engaged for the crown. Some years ago a Jewish broker at Wapping, was indicted for having in his possession some pieces of metal, without the needful document to show that they were purchased at the king's sale. He made no defence, and the fact was clearly proved, yet not less than five counsel were retained against him, four having silk gowns, and of course, receiving double fees.

Measuring the emoluments of the bar, by the laborious nature of its pursuits—by the amount of capital expended by its members, in fitting themselves for

those pursuits—by the gains of the inferior branch of the profession, attorneys and solicitors, we cannot consider them exorbitant. We must consider, that were those emoluments diminished, the bar would be thronged by men of inferior attainments, and belonging to inferior classes in society.

We have spoken of the laborious nature of those pursuits with which the practising lawyer is conversant. Such of our readers as have had practical experience on these points, will fully agree with us that the daily excitement, the unceasing wear and tear of body and mind, the unremitting sense of responsibility which attend the course of the successful advocate, can hardly be too highly remunerated, scarcely indeed compensated with money. This has been the case even in the earlier history of the profession.

The life of a counsel in full practice in the reign of Charles II, may be guessed from the account that Roger North has preserved of his brother while at the bar. "His lordship's great labor was to get time to be instructed well in causes of great consequence, as trials at the bar and hearings in chancery; and for that work he took the fresh of the morning. He had a very trusty boy who never failed, winter and summer, to come into his chamber at four in the morning. He could over night just, and but just, admit his clients and their agents; and being informed by them in the history of the cause, and where the pinch was, he was then prepared, next day, to peruse his breviate, and the papers left with him; which was impossible to be done for one, whilst others waited without." Lord Eldon told the young Grants that to succeed at the bar, it was necessary to live like a hermit, and work like a horse. This aphorism reads well in verse—

"From morn to night, at Senate, Rolls, and Hall
Plead much, read more, dine late or not all."

The progress of reform in our judicial system, while it has, to a certain extent, been productive of great advantages, has also been attended with some evils. From the diminution of sessions practice, in consequence of the New Poor Law Act, one opening which was formerly afforded to the young barrister of making himself known, acquiring experience and habits of self-possession which would avail him in Westminster-hall, has been considerably narrowed. By the etiquette of the profession, serjeants, queen's counsel, and barristers with patents of precedency, do not attend sessions; thus an opportunity is afforded, to those who elsewhere are called on to do nothing more than open the pleadings and examine the witnesses, of displaying their abilities in addressing a jury.

The abolition of the Welsh jurisdictions has also been attended with some injury to the bar. After accepting the office of attorney or solicitor-general, no barrister can return to his circuit. These offices, then, afforded some compensation for the loss thus sustained. In themselves, however, they were terrible nuisances, expensive to the country and productive of but little benefit or advantage to those for whom they were established.

Mr. Justice Hardinge, who held one of these appointments, once addressed the grand jury at Brecon, in these words, "Where gentlemen, is my calendar? It is not in my hand. It is a perfect blank. There is not one prisoner for trial." When he got to Cardiff, he said, "I cannot forbear to admire the

eloquence of the gaoler and of his calendar. There I perceive three little words, not to be surpassed by Demosthenes himself—'None for trial.' May those brilliant words record and perpetuate the honor of this country *for ages to come!*" At Presteigne, he said, "I pass over the calendar with its pilfered watch, the single and petty offence brought before us, just as if no calendar had been put into my hands.—We come to deliver, as it is called, an empty jail." A learned serjeant, who some years ago went that circuit, when asked if he expected much business, coolly replied, "Very little, I believe. We read of three or four murders in the calendar; but, I understand, the parties have met and have made it up: they are all compromised!"

In reference to the three principal professions, Dr. Parr used to say, that "physicians were the most learned, lawyers the most amusing, and then came the clergy." Lord Grenville said that he never met with a lawyer at a dinner party, but he felt certain the conversation would take a rational and improving turn. Sir Walter Scott says in his Diary, that "a barrister of extended practice, if he has any talents at all, is the best companion in the world."

Mr. Ward, in his admirable "Illustrations of Human Life," makes one of his favorite characters complain, that "he is never in the company of a lawyer but he fancies himself in a witness box." We do not think this to be the case. Taking them as a body, lawyers see much of life, and are constantly brought in contact with the best society. Their pursuits give them a great insight into the springs of human action; indeed, human character is as much their study as human laws. There have been, indeed, some instan-

ces of men having risen to great eminence at the bar, without acquiring any knowledge of the world, and who, when brought into society, have exhibited a most distressing ignorance of the rules by which it is governed. The following story has been told of Sir Anthony Hart:—When he was Lord Chancellor of Ireland, on the absence of the lord-lieutenant he was appointed, according to custom, one of the lords justices, to perform the functions of government until the viceroy returned. While filling this office Hart happened one day to drive past the barracks, and the guard, of course, turned out to salute him. Never supposing that this form was an honor intended for him, the worthy representative of royalty did not acknowledge the salute. The officer in command feeling annoyed at the apparent slight, mentioned the circumstance. And at last the story of his mortification reached the ears of the chancellor, who was most dreadfully shocked at his unfortunate mistake. Accordingly he desired his coachman on the following day to drive again past the barracks, and when the guard again saluted him, he acknowledged the compliment with a most *elaborate* bow.

In a discussion on the Adultery Prevention Bill, in the house of lords, in Lord Kenyon's time, the Earl of Carlisle, in alluding to the chief justice, observed, that, like his brethren, he was a legal monk, a cloistered gownsman. Lord Kenyon replied, in a tone of considerable irritation, "Somebody tells us that the judges are legal monks, knowing nothing of the world! What is the world? It is necessary to define terms, in order to know what the world is, and what is meant by this knowledge of the world. If it is to be got by lounging, like young men of fashion, about

Bond-street, or at gaming tables, or at the course of Newmarket, or in private houses of great men, or in brothels, I disavow being acquainted with it; but, surely, something of what may be truly called a knowledge of the world, *quicquid amant homines*, may be contained in courts of justice."

His predecessor, Lord Mansfield, was an accomplished gentleman, and was as well acquainted with the usages of society, as with the principles of law.* In still later times, we have seen the bench occupied by individuals whose manners have been as finished as their knowledge has been profound. Sir Robert Graham, who retired from the Exchequer Court, in 1827, is an instance which will at once occur to our readers. Upon one occasion, when passing sentence on a batch of convicted criminals, he is said by accident to have pronounced sentence of transportation on one who it was intended should be hanged.—

* As an illustration of his knowledge of life, the following anecdote of Lord Mansfield may be cited. He one day called to see Bishop Trevor, with whom he was intimate. While he was in a room, conversing with the bishop's secretary, Dr. Addington, the physician was brought in, in an arm chair, by two porters, who were going to carry him up stairs. The secretary begged Lord Mansfield to go up first himself and prepare the bishop, who he feared would be shocked by the sight of his friend and physician in such ill health. "By no means," quickly answered Lord Mansfield, "by no means; let the doctor go up: you know nothing of human nature; the bishop will be put into a good humor, by seeing any one in a worse condition than himself." And so it proved, for when Lord Mansfield went up afterwards, Addington being then gone, the bishop said, "I fear the crows will soon have my excellent physician." The result was otherwise—the bishep died in a few weeks, while Addington survived many years.

Shocked beyond measure when apprised of this mistake, he desired the culprit to be again placed in the dock, and hastily putting on the black cap, he addressed him, "Prisoner at the bar, *I beg your pardon*," and then proceeded to pass on him the awful sentence of the law!

The high social position occupied by the bar in modern times is unquestionable. With the highest honors of the state open to him, the barrister is entitled to take rank amongst the gentry-classes of the kingdom; and we believe that his education and pursuits alike befit him for admission into the highest circles of society.

CHAPTER V.

ADVOCATES AND ADVOCACY,

Early Lawyers—Anderson—Coke—Egerton—Noy—Anagrams—Hale—North—Law tricks—Serjeant Maynard—Knowledge of law and advocacy—Lord Erskine—Lord Brougham—An Apothecary lawyer—Character of modern advocacy—Lord Abinger--Talking over a jury--Eloquence and Pelloquence—Mr. Charles Phillips and Mr. Taunton; or horse-whipping justified—Examining Witnesses—Serjeant Pell and Garrow—Counsel rebuked by witnesses—Jeffreys, Cockle, Serjeant Davy, Beercroft, Dunning, &c.—Lord Mansfield, Dunning, and Sir F. Norton—Lord Loughborough—Lord Ellenborough—Lord Alvanley—Lord Eldon—Mr. Serjeant Cockle—Mr. Serjeant Bond—Lord Erskine—Sir Vicary Gibbs—Garrow—Jekyll—Mr. Serjeant Hullock—Sir Samuel Romilly.

Our early lawyers were not remarkable for their eloquence. Ascham speaks of some of them "as roaring like a bull; and," he adds, "they do best when they cry loudest." Sir Thomas Elyot, in his "Governor," observes, in reference to the law, that inasmuch "as the tongue wherein it is spoken is barbarous, and the *stirring of the affections of the mind in this nature was never used*, therefore there lacked elocution and pronunciation, two of the principal parts of rhetoricke; notwithstanding some lawyers, *if they be well retained*, will, in a mean cause, pronounce right vehemently." Profound learning, it would appear, afforded in those

days the best title to success; and, probably, the most successful advocate never aspired to do more than obtain the approbation of the court, and his brethren at the bar. There was not then a public—watching, with intense interest, the proceedings of the courts of law and justice—ready to reward, with the meed of praise, the redressor of the wronged, or the protector of the innocent. In examining the state trials, which afford the best records of forensic eloquence, it is amusing to trace in the structure, the tone, and the allusions of counsel, the taste, manners, and degree of enlightenment of their times. From the earliest period of which any account of these is preserved, until the time of the Revolution, we find the speeches of the advocates, for the most part, marked with a spirit of bitterness and malice, repugnant to the feelings of a more advanced stage of civilisation They abound with false metaphors, quaint images, plated* throughout with Latin and Scriptural quotations, and full of references to ancient history and mythology. There is, however, in many of these to be found a force and spirit often denied to more correct and elegant productions. In illustration of this, we subjoin an extract from a speech delivered by Anderson the queen's counsel, made on the arraignment of Campion, for high treason, in the reign of Queen Elizabeth. Making allowance for the defects of the reporter, it will not be difficult to understand how it made the great sensation it did at the time.

* In allusion to the practice common in his day, of interlarding English with scraps of Latin, Sir Thomas Brown observes, that "if elegancie still proceedeth, and English pens maintain that stream we have of late observed to flow from many, we shall, within a few years, be fain to learn Latin *to understand English.*"

"If you ask from whence these treasons and seditious conspiracies had their first offspring, I ask, from whence they could have it, but from the well itself—the pope? For if we inspect the northern seditions, he it was that was notoriously the [their] encouragement, but also being put to flight, was their refuge. If we mean Storie, he it was that was the sworn liege and lord of so perjured a subject; if we look to Felton, he it was that excommunicated the queen, and all the commonalty that did her obedience. * * * An enemy to the crown, a professed scourge to the Gospel, enjoying the tranquility of the one, impatient of the success of the other, what would he not do to subvert them both? *He hath always been like himself* and never liker in aught than this—he knew well enough that no foreign hostility was convenient. The Spaniard would be discovered; the Frenchman would be suspected; the Roman not beloved. How then? Forsooth, men born and bred in our own nation, perfect in our own tongue and language, instructed in our own Universities—they, and only they, must endeavor our overthrow. In what order? They must come secretly into the realm; they must change their habit and names; they must dissemble their vocations; they must wander unknown. To what purpose? To dissuade the people from their allegiance to their prince! To reconcile them to the pope! To plant the Romish religion! To supplant both prince and province! By what? By saying of mass—by administering the sacrament—by hearing of confessions." His conclusion is eloquent. "To conclude what lenity may we hope for from the pope? What fidelity from their hands that have vowed themselves to him? What trust may the country repose in them that have

fled and renounced their country? How can their return be without danger, whose departure was so perilous? Note all circumstances, note all probabilities, and note them all for traitorous. And so being, it is reason they should have the law, and the due punishment, ordained for traitors; the which in her Majesty's behalf, we pray that they may have, and that the jury upon our allegation may pass for the trial." This speech is said to have been "very vehemently pronounced with a grave and austere countenance," and to have made the prisoners "very impatient and troublesomely affected." Campion, "somewhat amazed, demanded of Mr. Anderson, whether he came as an orator, to accuse them; or, as a pleader, to give in evidence."

We proceed to give some account of such of our earlier advocates, as from their reputation deserve notice in this place.

Coke, the great luminary of English jurisprudence, was educated at Cambridge; and after having resided at Clifford's Inn for a year, entered himself at the Inner Temple. He very soon acquired such a knowledge of the law, that he excited the attention of the benchers, to which circumstance he probably owed his early admission to the bar. In Trinity Term, 1578, he appeared in the King's Bench for the first time (4 Rep. 14 *a*), and in a very important case. He very speedily obtained a considerable practice; and his merits being duly appreciated by the sagacious statesmen that surrounded the throne of Elizabeth, he was soon secured for the service of the court. After having held the speakership of the house of commons, he was made attorney-general; in which post

he continued until he was raised to the bench. Of Coke, as an advocate, we know nothing, except his conduct in the state prosecutions of his time. In these he appears in no very favorable light: rough blustering, overbearing; to the court disrespectful, to the culprit insulting. "In your pleadings," his great rival once wrote to him, "you were wont to insult over misery and to inveigh bitterly at the persons, which bred you many enemies." His conduct to the gallant and unfortunate Raleigh on his trial, is well known. He addressed to him the most opprobrious epithets. "Thou art a monster:" he said, "thou hast an English face, and a Spanish heart." "Thou viper, for I *thou** thee, thou viper." But we must not judge Coke too harshly. Even in a later age, coarseness not less revolting was common, not only from the bar, but even from the bench. We do not allude to the diatribes of Scroggs or Jeffreys, whose violence disgraced humanity itself, but even to the gentle and moderate Sir Matthew Hale, the pious and reverend judge, whose virtues consecrate the brightest pages in our legal history. Hale, addressing the prosecutor in a trial at which he presided, said, "Come, come, Larimer, thou art a *very villain.* Nay, I think thou art a *devil.*"

Coke does not appear to have "borne himself meekly in his high office," and to have, on the strength of his pre-eminence as attorney-general, displayed his violence of temper towards his juniors. The following is the account which Bacon gives of the treatment he received from him:—"I moved to have a re-seizure

* It has been supposed that Shakspeare alludes to this speech, when he makes Sir Toby Belch say to Sir Andrew Aguecheek, "If thou *thou'st* him some thrice it shall not be amiss."

of the lands of George Moore, a relapsed recusant, a fugitive and preaching traitor, and showed better matter for the queen against the discharged by plea, which is even with a *salus jure*. And this I did in as gentle and as reasonable terms as might be. Mr. attorney kindled, and said, 'Mr. Bacon, if you have any tooth against me, pluck it out; for it will do you more hurt than all the teeth in your head will do you good.' I answered coldly, and in these words: 'Mr. Attorney, I respect you; I fear you not; and the less you speak of your own greatness, the more I will think of it.' He replied: 'I scorn to stand upon terms of greatness towards you who are less than little, less than least;' and other strange light terms he gave me, with that insulting which cannot be expressed.

"Herewith slurred, yet I said no more than this: 'Mr. Attorney, do not depress me so far, for I have been your better, and may be again when it please the queen.

"With this he spake, neither I nor himself could tell what, as if he had been born attorney-general; and, in the end, bade me not meddle with the queen's business, but with my own, and that I was unsworn, &c. I told him, sworn or unsworn was all one to an honest man; and that I ever set my service first and myself second, and wished to God he would do the like.' Then he said, it were good to clap a *capias utlegatum* upon my back; to which I only said he could not, and that he was at fault without he hunted upon an old scent. He gave me a number of disgraceful words besides, which I answered with silence, and showing that I was not moved with them."

The following anecdote has been related of the

first instance which SIR THOMAS EGERTON, afterwards lord-keeper and lord-chancellor, gave of his striking talents. He was one day present at a trial of an action, in which a poor woman was defendant and two rich graziers plaintiffs. It appeared that the graziers, with another, had deposited in the defendant's hands, some time before, a sum of money, upon the condition that she should return it whenever they should appear together to claim it. Sometime after this, early in the morning, one of the graziers came running to her and said that his partners were hard by in the market, that they were about to make a most advantageous bargain, but unfortunately found that they had not money enough, that they were coming to her when they had settled the matter, and that they had sent him to her to request her to send the money as quickly as possible. Suspecting no harm, she accepted his offer of carrying them the money himself, and gave it to him. The two other farmers brought this action to recover the whole deposit. An intimate friend of Egerton's was of counsel for the defendant, and anticipating his failure, said to Egerton, "Your cause (Egerton was engaged in the next cause) will come on directly—ours will be soon over—we shall lose it." "That cannot be;" replied Egerton. "How, cannot be?" said his friend. "It cannot be in strictness of law." "If it cannot be according to strictness of law; and you can devise any means of saving my client, I wish you would speak as *amicus curiæ*." Egerton, on this, got up, and having obtained permission, addressed the court. Taking care, to establish, in the first instance, the conditions on which the money was entrusted to the woman, he contended that inasmuch as only *two* of

the partners had brought this action, the verdict must go for the defendant. "It is to the three appearing together," he said, "that the defendant agreed to pay the money—where is the third? The three have never demanded the deposit or she would have paid it to them." To this reasoning no answer could be given, and the result was in accordance with his expectations.

William Noy, attorney-general to Charles I, with whom the fatal measure of levying ship-money is said to have originated, was a sound lawyer and an able advocate. The following anecdote has been related of him. When Sir Anthony Cooper (afterwards earl of Shaftesbnry) was in his thirteenth year, a conspiracy was formed to deprive him of his patrimony, under pretence that it was chargeable with his father's debts. A decree for its sale having been corruptly obtained, his trustees were thrown into prison by the Court of Wards, until they should consent to sign a conveyance of it. Having managed to obtain their release, they filed a bill in equity against the conspirators, and a day was fixed for hearing. Noy, the attorney-general, who had been the intimate friend of old Sir Anthony, it was supposed would not act for the infant as it was understood that the crown had some claim of wardship; but Sir Anthony, young as he was, went to him, related to him the transaction, and told him he had no one to rely on but himself, the ancient and steadfast friend of his grandfather. Noy, struck with the spirit of the youthful baronet, promised to do his best for him, even at the risk of his place, and in performing his promise succeeded in defeating the conspiracy. For his exertions in this case he refused to take any fees.

Shortly after Noy's death, Howell—who it seems did not like him—observed in a letter to Lord Savage, "Though he had good matter in his brain, he had, it seems, ill materials in his body, for his heart was shrivelled like a leather penny purse when he was dissected, nor were his lungs sound." By his will which was in Latin, after having bequeathed a few legacies, Noy left his second son 100 marks a-year, and £500 in money, and concluded thus, "Reliqua meorum omnia primogenito meo Edwardo, dissipanda nec melius unquam speravi lego."* An excellent anagram was made on his name—William Noyle—*I moyle in law*. Writers of his age were exceedingly fond of that species of ingenious trifling. Dr. Tillesley, in his reply to Selden's History of Tythes, remarks, that his name transposed signified "nothing," *needless*. Selden retorted, "By virtue of a like way of wit, (that I confess I will never make an example of mine), some take it for *needles* that have pricked the doctor. I remember the schoolboys had this trick, when I was a child, and we commonly so called each other with turning our names backwards, and so the boys called me. Would the doctor but allow me such a piece of boy's play, I could give him a significant anagram of his own name—"*I tell lies.*"

Sir Mathew Hale, originally intended to have entered the army, but coming to town on some business connected with a law suit, he became known to Mr. (afterwards Serjt.) Glanville, who, struck by

* The rest of my goods I leave to my first born, Edward to be dissipated—I never hoped better."

the singular clearness of apprehension which he manifested, persuaded him to turn his attention to the bar, which he did, and very speedily became eminent and respected by both the royalists and parliamentary parties. Although he had been counsel for Lord Strafford and Archbishop Laud,* he was named by the parliament to assist as counsel the commissioners sent to the king at Oxford. He was also retained on behalf of Charles I, but in consequence of the king denying the jurisdiction of the court he was not heard. He defended, however, several of the royalists, and amongst the rest the Duke of Hamilton, and with such spirit as to induce the attorney-general to threaten him for appearing against the government. Hale retorted, "That he was pleading in defence of those laws which they declared they would preserve and maintain; that he was doing his duty to his client, and that no threats should deter him from the discharge of that duty."

In pleading, Hale avoided "The mis-reciting of evidence, the making of false quotations, and such confident assertions as were calculated to mislead." He was not an orator. Styles frequently complains that he spoke so low "that he could not hear him well."† "He was," said Baxter, "but of slow speech,

* Herne the archbishop's senior counsel, though a poor reasoner, was very quick and witty. When Serjt. Wilde, who was one of the managers for the Commons, observed, "That though no *one* crime of Laud's amounted to high treason, yet all his misdemeanors taken together by way of accumulation made many grand treasons;" Herne quickly replied, "I crave your pardon, Mr. Serjeant: I never understood before, that two hundred couple of black rabbits would make a black horse."

† Watt v. Dix, Styles, 204. Moor v. Earl of Rivers, 222.

and sometimes so hesitating that, a stranger would have thought him a man of low parts."

FRANCES NORTH (afterwards lord-keeper Guilford) owed his success at the bar in a great measure to the friendship of Sir Jeffrey Palmer, the attorney-general, who, when he grew old, would get North to take briefs in the King's Bench for him. North went the Norfolk circuit, where he became acquainted with a miserly old serjeant who monopolized all the business there, and from whom, as they rode along together, he learnt much; being careful to keep his discourse flowing, "for being mostly of law and *tricks*, and sometimes of purchases, and management and the like, it was," says Roger North, "very beneficial to one who had his experience to gather." There is a most admirable and entertaining life of North, published by his brother, to which we refer the reader.

The eloquence of the English bar belongs to a later period in history than that of which we have been speaking. From the time of Lord Cowper down to the days of Erskine, we can boast a series of forensic orators, who, in the highest attributes of eloquence, would vie with the most renowned speakers that have adorned our senate. It will also be found, that accomplished as these have been as orators, they have been also often profound, and always well read lawyers: for it is an error to suppose that law-learning and eloquence are incompatible; and a far greater error to suppose, that in modern time, any "figures of speech" will compensate for an intimate acquaintance with the principles of the law, and the practice of the courts.

Lord Erskine, in a letter which has been published,

says, "That no man can be a great advocate, who is no lawyer. The thing is impossible." In former times, however, when oratory was in greater requisition at the bar than at present, the thing was far more possible. Now the judges have a habit of interrupting counsel with remarks and questions, with a view of shortening proceeding, which would, to borrow the language of a learned friend, at once "throw on his back" any barrister who should venture before them with but little knowledge of law, despite all his quickness and eloquence. When Lord Brougham heard a counsel addresssing the court in a flowery strain, he sarcastically observed to some one near him, "Poor young man! he has read the wrong Phillips." Of a certain advocate, who was no lawyer, the following anecdote has been related: In an action of trespass that was brought, the plea in justification was an entry for the purpose of cutting wood as *fire-bote.*"* "You admit, sir," said the counsel for the plaintiff, in cross-examining a witness, "that you went on the land for the express purpose of cutting wood?" "Yes, your worship." "And what was the size of the wood?" "Small twigs and switches, your honor." "What—twigs and switches—and pray, sir, what right had you to cut these small twigs and switches?" "Oh, sir, I cut them for botes." "*Boats*, indeed, why they could hardly have been big enough for walking switches."

Some of our ablest lawyers have made sad failures, when, in addressing a jury they have attempted to

* By custom in some manors, the tenant is entitled to a certain quantity of wood, which is called house-bote or fire-bote.

interest the feelings, or to appeal to the sympathies. Those who, in the process of acquiring profound knowledge, have sequestered themselves from the world, and to whom its ways and opinions have become less familiar than the pages of the reports, or the statutes at large, find themselves at a disadvantage, when that knowledge is required at their hands which reading never has given and never can give; and that tact is demanded which unceasing conversance with men alone can confer.

A learned serjeant in former times, who was originally bred an apothecary and accoucheur, determined to change his profession, and applied himself to the study of the law. In due time he acquired a respectable practice, and an extensive reputation as a lawyer, though his oratorical achievements were by no means remarkable. When Murphy, the dramatist, went the home circuit, he had the curiosity to take down a speech of this learned serjeant, which consisted of little else than repetitions of "*Gemmen* of the jury." This speech he afterwards showed to Lord Chief Baron Skinner, who, instead of laughing at it with the rest of the company, gravely observed, that "He thought the learned serjeant very ill-treated; for though it was true that *he had* often delivered other people, it was never *understood that he could deliver himself.*"

It is, however, a great mistake to suppose that the most successful advocate is he that is the most eloquent. The present Lord Abinger, who on all hands must be admitted to have been the first advocate of his time, had not the remotest pretensions to eloquence. His style was colloquial; he *talked* over the jury. He never *bullied* them, attempting, like his

great antagonist, Mr. Brougham, to wring verdicts from them, and to force them, reluctant and terrified, to do his bidding. His bearing towards them was bland and respectful; he took care never to alarm them with the fury of rhetoric; he was fluent, and as Johnson said of Churchill, was a tree that only bore crabs, but bore a great many. Sir Albert Pell was another instance of a successful advocate who never "trod the primrose paths" of flowery speech. He was famous for violating the rules of grammar and pronunciation every time he opened his mouth. He was verbose and prolix, and yet succeeded in getting verdicts. This secret might be learnt from the following anecdote: A gentleman happened to be in a room with him the day after he had been engaged in an important cause in the neighborhood, and made some slight allusion to the tautologous speech which the learned counsel had delivered. Pell immediately acknowledged the justice of the censure. "I certainly was confoundedly long," he said; "but did you observe the foreman, a heavy looking fellow in a yellow waistcoat. No more than one idea could ever stay in his thick head at a time, and I resolved that mine should be that one; so I hammered on till I saw by his eyes that he had got it. Do you think I cared a d——n for what you young critics might say?" Lord Brougham used to say of Pell's style of writing, "that it was not eloquence, it was *pelloquence*, and deserved to have a chapter in books of rhetoric to itself."

A bold, familiar, and forcible manner conveying to the minds of all present a belief that you are in earnest, is the most effective style for addressing a jury. An editor of a newspaper brought an action against

three gentlemen who had been attacked in his paper, and who had vindicated their character by inflicting on him by the severest chastisement. Mr. Charles Phillips who was of counsel for the defendant, made a splendid speech, depicting with great eloquence the cruelty with which his client had been treated, and managed very evidently to carry the jury along with him. Mr. (afterwards Justice) Taunton, who appeared for the defendant, quickly obliterated the impression that his brilliant opponent had made, by saying in a powerful, but familiar tone, "My friend's eloquent complaint in plain English amounts to this, that his client has received a good horse-whipping—and mine is as short—*that he richly deserved it!*"

It is, however, in the examination of witnesses, that the talent of the *nisi prius* advocate, in modern times, is the most strictly displayed. To force from an unwilling witness an important admission; to expose the inconsistencies of a plausible statement; in this does the advocate exhibit most effectively his powers. At a trial at Bristol, a hostile witness was called to prove a fact it was well known he could establish; but he evaded all the questions of the counsel for nearly an hour. The judge at length said that there was no use in carrying the examination any further. Mr. Pell who was the counsel, intreated permission to proceed; enough had been said by the witness to justify a suspicion, that he could prove the desired fact. Taking as a basis the admission already made, Mr. Pell put two or three additional questions which the witness was compelled to answer, and which establish the facts on which the cause depended. So great an impression did Mr. Pell make on this occasion, that on his success he was greeted with the

cheers of the spectators in the court. Garrow, whose talents for examination* were never excelled, was so confident in his powers of eliciting evidence from a witness, that he has been heard to say to one before examination, "You know a particnlar fact, and wish to conceal it—I'll put you on your guard—I'll get it out of you!" And this he never failed to do.

Counsel, however, have sometimes pushed their privilege of treating every hostile witness as a rogue rather too far, and have received some severe rebukes from those they had hoped to have made the objects either of scorn or ridicule. Jeffreys, the afterwards notorious chief-justice and chancellor, was retained on a trial, in the course of which he had to cross-examine a sturdy countryman, clad in the habiliments of the laborer. Finding the evidence of this witness telling against his client, Jeffreys determined to disconcert him. So he exclaimed in his own bluff manner, "You fellow in the leathern doublet, what have you been paid for swearing?" The man looked steadily at him, and replied, "Truly, sir, if you have no more for lying than I have for swearing, you might wear a leathern doublet as well as I." Jeffreys was once cross-examining a gentleman, who in the course of his evidence had frequently used the terms, lessor, lessee, assignor, assignee. "There," said the counsel, "you have been with your assignor and assignee, lessor and

* "After all," said Lord Mansfield on one occasion, "Cicero lays down the best rules for conducting causes." Turning to Erskine, who was present, he added, "Erskine, you should read Cicero; you are getting fast on, but you will benefit by them." He then repeated several, and said, "attend to these, Erskine; they are the results of experience, for Cicero went many a circuit."

lessee; do you know what a lessor or lessee is? I question if you do, with all your formal evidence." "Yes, but I do," returned the witness, "and I will give you an instance—if you nod to me, you are the nodder; and if I nod to you, you are the noddee."—But one of the best retorts this ferocious tyrant ever received was from a lady. Jeffrey's wife had been confined a very short time after her marriage, which excited much ridicule when it became known. Her husband was shortly after this unfortunate occurrence examining a fair witness, who gave her evidence with tolerable sharpness. He said, "Madam you are quick in your answers." "Quick as I am, Sir George, I am not so quick as your lady."* Serjt. Cockle, who was a rough blustering fellow, once got from a witness more than he gave. In a trial of a right of fishery, he asked the witness, "Do'st thou love fish?" "Aye," replied the witness with a grin, "but I donna like *cockle* sauce with it!" The roar of laughter which echoed through the court, rather disturbed the learned serjeant. There is an anecdote something similar related of Serjt. Davy, a great lawyer of the last age. A gentleman once appeared in the court of King's Bench to give bail in the sum of £3000. Serjt. Davy, wanting to display his wit, said to him, sternly, "And pray, sir, how do you make out that you are

* When Recorder, he was retained in an action brought to recover the wages of some musicians, who had officiated at a wedding party. He annoyed one of the plaintiffs with exclaiming frequently, "I say, fiddler; here you fiddler!" Shortly afterwards, this party called himself a "musicioner." On which Jeffreys asked what difference there was between a "musicioner" and a fiddler. "As much, sir," replied the plaintiff, "as between a pair of bagpipes and a recorder."

worth £3000. The gentleman stated the particulars of his property up to £2940. "That's all very good," said the serjeant, "but you want £60 more to be worth £3000." "For that sum," replied the gentleman, in no ways disconcerted, "I have a note of hand of one Mr. Serjt. Davy, and I hope he will have the honesty soon to settle it." The laughter that this reply excited, extended even to the bench; the serjeant looked abashed, and Lord Mansfield observed, in his usual urbane tone, "Well, brother Davy, I *think* we may accept the bail." Dr. Brodum, a notorious quack, was once under examination by Mr. Abraham Moore. "Your name is Brodum, I believe," inquired the counsel. The doctor nodded assent. "Pray how do you spell it—Bro dum or Broad-hum?" On this there was a loud laugh in court, which was not diminished when the quack replied with admirable self-possession, "Why, sare, as I be but a doctor, I spell my name Bro-dum; but if I were a *barrister*, I should spell it Broadhum!" Mr. Bearcroft, who was well known as an eminent advocate of the last age, was quite disconcerted by an old woman that he was examining calling him "Mr. Beer-craft." A messenger for the press, as that officer was formerly denominated, whose business it was to obtain information respecting seditious publications, was once giving evidence before the court of King's Bench against a bookseller. Mr. Hungeford, a famous advocate of the time, but more esteemed for his wit and love of quibbling than for his law-learning, who was examining him, made some reflections on the meanness of the messenger's duties. The messenger replied with some quickness, "I consider the place of messenger to the press to be quite as reputable as that of merry-an-

drew to the bar." Dunning, while examining a witness, asked him if he did not live at the very verge of the court. "Yes, I do," was the reply. "And pray why have you selected such a spot for your residence?" "In the vain hope of escaping the rascally impertinence of *Dunning*," was the retort. A witness with a *Bardolphian* nose coming in Dunning's way, he said to him, "Now Mr. Coppernose, you have been sworn, what do you say?" "Why, upon my oath," replied the witness "I would not exchange my copper nose for your brazen face!"

We proceed now to give some sketches of some of our more famous modern advocates.

MURRAY LORD MANSFIELD was extremely admired while at the bar, as a graceful and fluent speaker. When at the University, he devoted himself to the study of the great orators of antiquity. He translated many of Cicero's orations into English, and back again into Latin. He derived also great advantages from the refined taste and cultivated ear of his intimate friend, Mr. Pope. One morning a gentleman of Lincoln's-inn entered Murray's chamber rather abruptly, and detected his friend before a looking glass, practising the graces of a speaker—Pope sitting by to afford him the benefit of his criticisms. It was upon this occasion the future chief-justice paid Pope the compliment of addressing him "Tu es Mæcenas."

Sir Joshua Reynolds used to relate an anecdote which proved how highly Murray was esteemed as an advocate by the bar. Upon one occasion, Dunning was looking at the portraits hanging up in his gallery. Coming to one of Lord Mansfield, he stopped, and

addressing the artist, said, "I can well remember when I used to attend the court of law, as a student for instruction; and always made a point of going whenever I understood Murray was to speak. This was as great a treat to me, Sir Joshua, as a sight of the finest painting by Titian or Raffaele would be to you! Sometimes when we were leaving the court, we would hear the cry, 'Murray is up,' and forthwith we rushed back, as if to a play or other entertainment."

Having received his education in England, Murray always considered himself as an Englishman. His Scotch origin was once, however, thrown in his teeth and not without some effect. When General Sabine was govenor of Gibraltar, he endeavored to extort a sum of money from a Barbary Jew who lived in that place. But his efforts were unavailing. To punish the Jew, therefore for his contumacy; Sabine had him seized, and put on board a vessel, and sent him to Tetuan, with a letter to the bashaw, informing him he would receive therewith a pigeon to pluck. The bashaw, struck with compassion at the Jew's ill-usage, liberated him, and gave up Sabine's letter, with which the Jew came to England, where he brought an action against the governor. When the action was tried, Murray who was counsel for Sabine, affected to treat the matter very lightly. "Great stress had been laid," he said, "on the cruelty of the proceeding. The Jew, it had been said, was banished True he was banished; but to where? Why, to the place of his nativity! Where is the cruelty, where the hardship, where the injustice, of banishing a man to his own country?" Mr. Nowell, who appeared for the Jew, said, "Since my learned friend thinks so lightly of this matter, I would just ask him to sup-

pose the case his own. Would *he* like to be banished to *his* native land?"* The court rung with peals of laughter, in which Murray himself most heartily joined.

The court of Chancery, in which Murray chiefly practised, afforded less scope for his oratorical talents, than the trials at *nisi prius* would have done. His natural quickness and wit would have rendered him peculiarly qualified for this species of practice. His style of speaking was rather elegant and persuasive than forcible. After he had addressed the house of commons upon some important occasion, (probably in opposition to the bill introduced in consequence of the Porteous' riots at Edinburgh,) Sir Robert Walpole observed, that the speech he heard resembled an oration of Cicero. Mr. Pulteney observed that he could fancy that Cicero not only composed, but delivered it.

Dunning is one of the most remarkable instances upon record, of the triumph of genius over physical defects. He labored, first, under the disadvantage of a singularly unprepossessing exterior. He was the ugliest man† of his day, without being in any way

* Dr. Johnson would never allow that Scotland derived any credit from Lord Mansfield, as he was educated in England: "Much may be done with a Scotchman," he added, "if he be *caught young!*"

† So little was Dunning conscious of his own defects, that he was extremely fond of viewing his person in a mirror. One evening a client called upon Dunning at his chambers: he was not there, and his clerk directed the client to a coffee-house, where he said the learned advocate generally spent his evenings. When the client reached the coffee-house, he inquired for Mr.

what could be called deformed. His figure was short and *stumpy*. His complexion was sallow, his face was adorned with a snub nose, giving a remarkably plebeian expression to his countenance. His whole frame was infirm and weak. He labored also under an affection of the nerves, which occasioned his head to be in a state of perpetual oscillation. His voice was most repulsive. His throat was always half choaked with phlegm, as though he were laboring under a chronic catarrh; and when a member of parliament, he always gave intimation of his intention to address the house, by violent and incessant efforts to clear his throat. All his efforts were unavailing, to render his voice otherwise than husky and unpleasant. Yet in spite of all these drawbacks, Dunning was the first orator of his day. The greatest defect in his style of speaking was, that at times it was too subtle and refined; but still it was bold and convincing. He was remarkable for his extraordinary fluency. So rapid, indeed was his utterance, that he was the terror of the reporters. Still he never violated the rules of grammar; and although his style of speaking was extremely involved, it was remarkably finished and correct, yet bearing every mark of being unpremeditated. As a *nisi prius* advocate, he was unequalled for promptitude and nerve. The first time, however, he spoke at the bar of the house of commons, so entirely had his self-possession deserted him, that he was going hastily to retire, believing his brief

Dunning; the waiter declared that he did not know such a person. "Then go up stairs and see if there is a gentleman there with a face like the knave of clubs, and if so, tell him he is wanted." The waiter went up and immediately discovered Dunning."

to be nothing more than a roll of white paper he had taken up by mistake.

There was one feature in Dunning's character which deserves especially to be commemorated—his manly bearing towards the bench—always respectful, never sycophantic—disdaining the mean arts by which some of the advocates of his day sought to win the favor of the court as a sure passport to business. Mr. Dunning, by his correct and upright conduct, served in no trifling degree to support the dignity of his profession, when the chief magistrate of the first court of justice in the kingdom did not appear to estimate that dignity very highly. Lord Mansfield, who prided himself in his power of discovering very early in a case, its true bearings, was in the frequent habit of taking up a book or a newspaper before counsel had concluded their arguments. This he was particularly fond of doing whenever Mr. Dunning addressed the court. Upon one occasion when he did so, Dunning paused—Lord Mansfield, without raising his eyes, said, "Pray go on Mr. Dunning—pray go on." Dunning replied, with a sarcastic air, "I wait your lordship's pleasure. I fear I shall disturb your lordship's *more important occupation;* I will wait till your lordship has leisure to attend to my client and his humble advocate." No one was more strenuous in supporting the etiquette of the profession than Dunning. It is customary when a counsel is retained, that a brief in the cause should be sent him. This practice was once departed from in the case of Dunning, who, with his usual spirit, accepted a brief on the other side. Not only was he one of the most eloquent advocates, he was also one of the most profound lawyers of his day. Mr. Nicholls once asked

Mr. Serjt. Hill, whether Dunning was equally learned with Mr. Serjt. Glynn—reputed the best-read lawyer in Westminster Hall: Mr. Serjt. Hill replied, "No; every thing which Dunning knows, he knows accurately, but Glynn knows a great deal more."

Lord Mansfield used to say of Dunning, that he was too minute and refined in his arguments, and that Wallace's straight forward good sense without show, often gave him the advantage over Dunning. "Sir Fletcher Norton's art," observed the same great authority, "was very likely to mislead a judge and jury; and with him I found it more difficult to prevent injustice being done, than with any person whoever practised before me."

In examining a witness, Dunning sometimes displayed great coarseness, and drew on himself the animadversion of his brethren. The following account has been given of his examination of an old woman, by whom he wished to prove the identity of a certain party:—

Dun. Was he a tall man?

Wit. Not very tall, your honor—much about the size of your worship's honor.

Dun. Was he good looking?

Wit. Quite contrary—much like your honor; but with a handsomer nose!"

Dun. Did he squint?

Wit. A little, your worship; but not so much as your honor by a good deal!

These replies produced a roar of laughter in the court in which Lord Mansfield joined. Conversing once with "honest Jack Lee," Dunning told him that he had just bought some good manors in Devonshire. "I wish, then," replied Jack, "you would bring some

of your *good manners* into Westminster Hall with you; for by Jove, you often deserve to be kicked for your impudence." Mr. James Smith tells a similar story of Sir Fletcher North. In addressing the court on some question of manorial rights, he happened to say, " My lord, I can instance the point in my own person. Now, my lord, I have myself *two little manors*. . Here Lord Mansfield interposed with one of his blandest smiles, We are well aware of that, Sir Fletcher.

ALEXANDER WEDDERBURNE LORD LOUGHBOROUGH was undoubtably one of the most remarkable men of his day. So versatile where his talents, that at St. James's he was reputed a refined courtier; in the court of chancery, an accomplished lawyer; in the house of lords a ready debater and eloquent orator. He originally studied for the Scotch bar, and began to practise as an advocate. His progress, however, was stopped by the following occurrence. On one occasion, in replying to a very powerful speech of Mr. Lockhart, at that time one of the leaders at the Scotish bar, he drew a very ludicrous picture of his opponent's eloquence, and summed up by saying, " Nay, my lords, if tears could have moved your lordships, tears, I am sure, would not have been wanting." The lord president immediately interrupted him, and said that such observations did not befit the dignity of the court. Wedderburne, unabashed at the reproof, declared that he had said nothing he was not entitled to say, and that he should not shrink from saying again. To this the president rejoined to such effect as to extort from the young advocate the observation, that his lordship had said

that as a judge which he durst not mantain as a man. The president immediately appealed to the court for protection, and Wedderburne was desired to make a most humiliating apology upon pain of deprivation. This he resolutely refused to do, and tearing his gown from his shoulders, declared he would never again enter a court as an advocate, where freedom of speech was forbidden him. He came to London, and commenced studying for the English bar. Upon his arrival he was fond of associating with the wits. Foote, it seems, took a dislike to him. "What can he mean by coming among us?" said the great wit; "he is not only dull himself, but the cause of dullness in others." Mr. Strahan the printer, told Mr. Boswell that he had been solicited by a countryman of theirs, who had since risen to eminence in the law, to obtain for him the conduct of the city causes.—Wedderburne, it has been supposed, was the individual alluded to. Although this method of obtaining business is hardly consistent with our notions of professional etiquette, it was probably more common in those days, and had the effect of obtaining a very tolerable practice for the young advocate. Lord Bute, to whom he was powerfully recommended, was probably of some assistance to him. He succeeded in overcoming, through the instructions of Mr. Mackline and M. Sheridan, the elder, the disadvantages of his Scottish accent. In order, indeed, to conceal this, as is generally the case, he got into a finical and affected method of speaking, which, because it was not natural, was therefore unpleasant. Mr. Bentham says that the first time he saw Wedderburne, was in the court of King's Bench, "with a silk gown on his back, making a motion with more distrėss and hesita-

tion, than he had witnessed on the part of the youngest and most obscure tyro." With all this he speedily acquired an excellent practice; so much so that his income, in a few years, exceeded that of Thurlow, who was reputed the leader of his court. In 1771, he was appointed solicitor-general, and it was in this capacity he had to appear before the privy council, to oppose a petition from the house of assembly of Massachusetts Bay, advocated by Franklin, and who was so severely attacked by Wedderburne that he never forgot or forgave it.

At the time of the riots in 1780, the privy council were convoked to advise on the measures necessary for quelling them. Doubts at that time were entertained by the lawyers, whether troops could legally fire on the people, without the riot act having in the first instance been read. Lord Mansfield shrunk from committing himself by giving a decided opinion on the question. Wedderburne, then attorney-general, was called in, and stated in precise terms that it was perfectly legal for the military to disperse a riotous assembly by force, without reading the riot act. "Is that your declaration of the law, as attorney-general?" asked the king. "It is," replied Wedderburne. "Then draw up an order to that effect." Wedderburne immediately drew up the order, the king signed it, and Lord Amherst put down the riots the same evening. Shortly after this, Wedderburne was raised to the chief-justiceship of the common pleas, nnd created a peer. Wedderburne was, like Dunning, extremely vain of his person; and, like Dunning, was vain of a person, which he was alone in admiring. Boswell once mentioned to Dr. Johnson, that both Wedderburne and a Mr. Cator, a friend of his, were

very fond of looking at themselves in the glass.—"They do not surprise me at all by doing so," said the doctor; "they see reflected in that glass, men who have risen from almost the lowest* situations in life; one to enormous riches, the other to every thing that this world can give—rank, fame, and fortune. They see, likewise, men who have merited their advancement by the exertion and improvement of those talents which God hath given them; and I see not why they should avoid the mirror." Johnson, however, was no admirer of Wedderburne. "Trying him," says Boswell, "by the test of his colloquial powers, Johnson had found him very defective. He once said to Sir Joshua Reynolds, 'This man has now been ten years about, and has made nothing of it,' meaning as a companion. He said to me 'I never heard any thing from him in company that was at all striking; and depend upon it, sir, it is when you come close to a man in conversation, that you discover what his real abilities are: to make a speech in a public assembly is a knack. Now I honor Thurlow, sir; Thurlow is a fine fellow, he fairly puts his mind to yours.'"

Amongst the most celebrated advocates of his day, was EDWARD LAW, afterwards LORD ELLENBOROUGH, and chief justice of the king's bench. An insurance case, in which he was engaged, is said to have been the first thing that brought him into notice. Having, upon that occasion, manifested an intimate and profound knowledge of mercantile law, and having succeeded in obtaining a verdict for his clients, he was

* This is not true of Wedderburne, who was of an ancient family, was well connected and educated, and had always lived in the best society in both London and Edinburgh.

afterwards usually retained by the great trading and commercial bodies of London, in all legal proceedings to which they became parties. Law had also the good fortune to obtain a brief, in a cause still more important, and which proved the stepping stone to the highest honors of his profession. It is well known that when Warren Hastings was impeached by the house of commons, the task of defending the ex-governor was proffered to Erskine, who declined it from an apprehension that it would involve him with his party, and especially with Fox, to whom he was deeply attached, politically and personally. Sir Thomas Rumbold, who had married Law's sister, upon this introduced Law to Hastings, and the young lawyer was ultimately intrusted with the conduct of the defence. He more than justified the expectation of his friends. His cautious and calculating spirit—his coolness of temper, which never suffered itself to be surprised into excess—his strong nerves, which all the eloquence, and prejudice, and reputation, against which he had to struggle, never overcame—admirably qualified him to cope with the vehemence of Burke, the rich fancy of Fox, and the pointed wit and sarcasm of Sheridan; whilst, on the score of legal knowledge, Law had nothing to fear, although enlisted against him were the abilities of Lawrence, Pigot and Mansfield. In discharging the duties thus imposed upon him, Law succeeded in establishing a great constitutional principle, against which, Burke, speaking as the representative of the commons of England had protested: he succeeded in proving that sitting as a court of justice, the lords were bound to adhere to the law—to respect the rules of evidence established by law—and to give the accused the benefit

of every technical objection that would avail him in Westminster hall! "The commons of England," exclaimed Burke, "were not clerks but laymen, and as such, pursued the ends of justice without the niceties of special pleading." He desired also, that the evidence upon each article might be taken separately—a monstrous proposition, which Law successfully combatted. "It was," says one of his biographers, "most important for the interest of the defendant, that the whole evidence in support of all the charges should be heard before he entered on his justification." With Burke and Sheridan, Law came frequently into collision. Having complained of the delay on the part of Burke and his assistants, Law observed "that the right honorable manager always went in a circle, and never in a right line. They owed it to their common character to prevent unneccessary delay." "Common character!" exclaimed Burke, in a tone of hauteur,—"I can never suffer the dignity of the house of commons to be implicated in the common character of the bar! Let the learned counsel take care of *his* character—we know the dignity of our station!" When Law called upon the manager to retract an assertion he had made, and which the evidence had proved to be false, Burke replied, in a proud tone "my lords, the counsel deserves no answer!" Sheridan stated that the treasures in the Zenena of the Begum was "an offering laid by the hand of piety upon the altar of the saint." Law inquired, in a sarcastic tone, "how the Begum could be considered a saint, and how the camels—the better part of her treasures—were to be laid on an altar?" Sheridan, upon this declared "that it was the first time in his life, that he ever heard of special pleading on a metaphor or a

bill of indictment against a trope; but such was the turn of the honorable gentlemen's mind, that whenever he tried to be humorous, no jest was apparent, and when serious, no fact could be found.*" Law's speech for the defence, which occupied the whole of three days, was a masterly dissection of the evidence which had been produced against his client, and contrasted remarkably, in its strict coherency—disdain of mere ornament—and display of legal knowledge with the brilliancy, but often the exaggeration, of his eloquent antagonists. Without doubt, his success upon this occasion, was the means of advancing his reputation greatly in public estimation, and brought him a large accession to his rapidly-increasing business. He had the advantage of Erskine, with whom he divided the business of the common law courts, in consequence of his profound legal attainments. And even in questions which demand rather the tact and address of the advocate than the learning of the lawyer Erskine sometimes found his rival formidable. In a trial at Manchester, an objection having been made to the admission of some evidence, Erskine exclaimed, "Good G—! where am I?" "In a British

* Law, some years after this, had an opportunity, which he did not fail to seize, of repaying the sarcasm and ridicule he had to endure at Sheridan's hands. That versatile politician was examined by him, as a witness upon the trial of Lord Thanet, the late Mr. Cutlar Ferguson, and others, for a conspiracy and riot at Maidstone, in 1798. Law took ample revenge for past wrongs. Of this examination, Sheridan used to give a poetical version; and reported that when Law captiously observed, "do pray answer my question without point or epigram;" he replied, "you say true; your questions are without point or epigram."

court of justice;" coolly replied Law. "How is my client to be exculpated?" "By legal evidence." "I stand, I stand," vociferated Erskine, "before the people of England for justice." "And I," spiritedly replied Law, "am equally before the people of England, for the protection of the people of England; if you rise in this tone, I can speak as loudly and as emphatically." But the two leaders mutually admired one another, and when the fierce contest was over were ready to pay willing tribute to each other's merits. Law was selected out of the whole bar, by Lord Kenyon, as an object for his continual censure. Towards the rising lawyer the chief justice was not ashamed to display every species of indignity that he possibly could, often violating the common decencies of civilised life—the dignity of the bench was a notion wholly foreign to *his* mind. Upon one occasion, he received from Law a rebuke as dignified as it was just. Erskine, who was on the other side, introduced into his speech some personalities which Law considered himself bound to answer. In beginning his reply, he exclaimed, fixing his eyes on Erskine.

"Dicta ferox non me tua fervida terrent;"

and then, stopping, looked Lord Kenyon full in the face, and finished the quotation:—

"Dii me terrent et *Jupiter Hostis!*"

Once, when he moved unsuccessfully for a new trial, he received from Kenyon the sarcastic observation, "Well, sir, you have aired your brief once more."

Richard Pepper Arden is said to have owed his success in life, in a great measure, to his youthful acquaintance in life with Mr. Pitt. These two young men, one of whom afterwards presided at the helm of the state for so many years, became acquainted through the accidental circumstance of their holding chambers on the same staircase in Stone Buildings. Arden was not amongst those happy few whose appearance in court was immediately followed by an overflow of business; but his family connections, which were both wealthy and numerous, while they gradually increased his practice, rendered its increase not a matter of actual necessity. He was, when young, made a Welsh judge. To his conduct, in this capacity, a severe allusion was once made by Lord Thurlow, to whom Arden was personally obnoxious. On one occasion he was arguing in court a case, in the course of which the age of a certain woman mentioned in an affidavit came in question. In the affidavit she was stated as being forty-five years old, but Arden believed her to be considerably older. Finding that his reasoning did not convince Mr. (afterwards Baron,) Graham, the counsel on the other side, Arden exclaimed in his vivacious manner, "I'll lay you a bottle of wine—." Lord Thurlow's offended look reminded him of what he had said. "I beg your pardon, my lord, I really forgot where I was." "You thought you were *in your own court*, I suppose, Mr. Arden," growled the indignant chancellor. At this time it was customary for barristers to "ride the circuit." The roads were not what MacAdam has made them since, and posting was therefore comparatively rare. Arden used to relate the following anecdote in reference to his adventures he had in

purchasing a horse for this purpose. "Some years ago an action was brought against a gentleman of the bar, respecting a horse he had bought for the circuit. The horse was taken home, and he mounted him to show his paces; the animal would not stir a step; he tried to turn him round, but he was determined not to go the circuit. The horse dealer was informed of the animal's obstinacy, and was asked how he ventured to sell him such a horse. 'Well,' said the dealer, 'it can't be helped; give me back the horse; give me £5, and settle the matter.' The barrister refused, and advised him to send the animal to be broken by a rough-rider. 'Rough-rider,' said the dealer, 'he has had rough riders enough already.' 'How came you to sell me a horse that would not go?' rejoined the lawyer. 'I sold you one warranted sound, and sound he is,' concluded the dealer, 'but as to his going, I never thought he would go, and I never said he would.'"

By Pitt's interest Arden was created successively solicitor and attorney-general, in connection with which two offices he held the chief justiceship of Chester. An absurd incident occurred while he was holding the attorney-generalship: the following account has been recorded by Mr. Reynolds:—"To refuse or grant a patent for a new invention, is peculiarly within the province of the attorney-general, who does not usually exercise a very strict surveillance. A French count having discovered the means of creating an impelling power, by the aid of an artificial wind, counteracting the effects of the natural wind, Baron Pilnitz thought that this balloon would be seen sailing like a ship, and applied for a patent. The attorney-general naturally surprised at

this extraordinary application, desired an interview, and my father being out of town, I was compelled to conduct the count to Mr. Arden's chambers, in Portugal Street, when the following curious conversation ensued. 'Pray, what does this absurd application mean?' 'Mean, sir,' I repeated with some surprise, 'it means, that by artificial wind, counteracting the effects of the natural wind, we can direct balloons.' 'And what then?' 'What then, sir?' 'Aye, what then?' 'Why, sir,' I replied with great consequence and volubility, 'we shall not only raise botany to the highest pitch of perfection, by transplanting fresh roots and plants from one country to another; we shall not only raise the sieges of garrisons by introducing armed men and provisions, at our pleasure, but we shall discover the North-West passage.' 'Aye,' interrupted the attorney-general, scarcely able to suppress his laughter, 'and in your mighty wisdom not only defraud the customs and excise, but annihilate the revenue arising from the post-office. Pooh! nonsense! artificial wind (laughing heartily) stuff, who is to supply the wind? Your client there?' The baron seeing the attorney-general, as he conceived, delighted, smiling said, 'L' advocat-général, que dit-il, Mons. Frederic?' I replied, in bad French, made worse by confusion, 'Il demande, baron, si vous êtes le personne qui fait le vent flatulent." 'Diable!' exclaimed the baron. The attorney-general then rose, bowed, and coolly desired me to tell my father that the baron's was less a case for a lawyer than a physician."

As an advocate, John Scott, so familiar to the student of "Vesey" as Lord Eldon, failed to acquire

any considerable fame. As his practice lay chiefly in the chancery court, he had not much opportunity for displaying anything like forensic oratory; but he had the opportunity, which he seized, of manifesting that tact and discretion, which, as much, if not much more than, eloquence, go to the composition of an accomplished advocate. His manner of addressing the rough old chancellor, Thurlow, was deferential and respectful. He would rise with an air of feigned embarrassment, and wait until a surly nod would tell him that the chancellor was ready to hear him. Artfully directing his observations as much to the judge as to the cause, he generally managed to obtain the chancellor's attention; and by never pushing his argument when he found it displeasing to Thurlow, conciliated his regard. Scott, however, distinguished himself rather as a lawyer than as an advocate. The ready wit, the rapid elocution, the fund of humor, the intimate knowledge of the world, which is essential to success in the nisi prius advocate, Scott did not possess. When the leader of the northern circuit, he was asked by a young barrister, about to travel that circuit, what books it was advisable he should bring with him, he replied, "The best you can take is *Joe Miller*."

Horne Tooke declared that if he were to be tried again, he would plead guilty, rather than hear Scott's long speeches, one of which lasted *nine hours*.

When attorney-general, Scott is admitted to have behaved with much lenity in the discharge of his duty as state prosecutor. After the trial of Thomas Hardy for high treason, the following circumstance occurred; we give it in his own words. "After a trial of many days, the jury retired to deliberate; upon their re-

turn their names were called over. I shall never forget that awful moment. 'Gentlemen of the jury,' said the clerk of arraigns, 'are you agreed in your verdict? what say you—is Thomas Hardy guilty of high treason, of which he stands indicted, or is he not guilty?' 'Not guilty,' in an audible tone, was the answer. It was received in court silently, and without noise—all was still—but the shout of the people was heard down the whole street. The door of the jury-box was opened for the jurymen to retire; the crowd separated for them as the saviours of their country. I was preparing to retire, when Mr. Garrow said, 'Do not, Mr. Attorney, pass that tall man at the end of the table. 'And why not,' said Mr. Law, who stood next. 'He has been here,' answered Mr. Garrow, 'during the whole trial, with his eyes constantly fixed on the attorney general.' 'I will pass him,' said Mr. Law. 'And so will I,'' was my rejoinder. As we passed the man drew back. When I entered my carriage, the mob rushed forward, crying, 'That's he, drag him out.' Mr. Erskine, from whose carriage the mob had taken off the horses to draw him home in triumph, stopped the people, saying, 'I will not go without the attorney-general.' I instantly addressed them; 'So you imagine that if you kill me, you will be without an attorney-general?' Before ten o'clock to-morrow there will be a new attorney, by no means so favorably disposed to you as I am.' I heard a friend in the crowd exclaim, 'Let him alone, let him alone!' They separated, and I proceeded. When I reached my house, in Gower-street, I saw close to my door the tall man who stood near me in court. I had no alternative. I instantly went up to him. 'What do you want,

I said. 'Do not be alarmed,' he answered, 'I have attended in court during the whole of the trials. I know my own strength, and am resolved to stand by you. You once did an act of great kindness to my father. Thank God you are safe at home; may he bless and protect you!' He instantly disappeared."

At the trial of Horne Tooke, Scott, who prosecuted as attorney-general, declared, in undertaking the prosecution, he had been guided by the dictates of his conscience, and expressed his hope that after he was gone, his children might feel that in leaving them an example of public probity, he had left them an inheritance far more precious than any acquisition of property or honor he could bequeath to them. In repeating these words, Sir John Scott shed tears, and to the surprise of the court, Mitford, the solicitor-general, wept also. "What on earth," said some one to Horne Tooke, "can *Mitford* be crying for?" "At the thought of the little inheritance that poor Scott is likely to leave his children!" was Tooke's reply.

As an advocate, Scott was immeasurably inferior to Mr. Serjeant Cockle, whose powers of persuasion were so great, that he obtained the appellation of "the almighty of the north." In illustration of this phrase, the following anecdote has been related. A person who had a cause about to be tried at one of the assize towns on the northern circuit, attended a consultation of his counsel; but, in spite of the favorable view they took of his case, he seemed by his dolorous visage to apprehend a failure. At length he exclaimed, "I am much obliged to you, gentlemen, I am much obliged to you—but it won't do—it can't do—the *almighty* is against me!" "Are you

mad, man?" exclaimed the leader, amazèd at the extraordinary speech. "What has the Almighty to do with your cause?" "I don't mean Almighty God, sir," replied the client. "I mean Serjeant Cockle—he's o' t'other side." Of Serjt. Cockle's powers of ridicule, Mr. Espinasse tells the following story. An action was brought by a builder at Battle, to recover the amount of his bill for building a house. A surveyor was examined to prove that the work had been properly executed; and, according to the custom of his fraternity, he delivered his evidence in a tone of pompous conceit. Cockle, in examining him, treated him with an air of mock-respect, which made him believe that the serjeant admitted his pretensions, and estimated him at the value he set upon himself. Cockle begged him to produce the original of the estimate he had made of the work charged. It was accordingly handed to him. It stated the names of the plaintiff and defendant, the various items of the charge, and concluded, "I value at the sum of £350, the above work done at Battle in the county of Sussex." When the serjeant addressed the jury, he did so in the following words: "Gentlemen, a surveyor is an anomalous kind of animal; he can neither think, nor speak, nor write, like a common person. His perfect conviction of his own importance, is shown in every word he utters, and in every sentence he writes, even to the making out of a carpenter's bill. This puppet surveyor is not content with giving his estimate in plain language, and signed with his name; he must assume the style of an ambassador, and subscribes as an envoy would a treaty of peace. Look at the estimate and bill; he sets out the particulars of the charge, which he pronounces to be of the value of £350 per carpen-

ter's work—that is plain English; but how does it conclude? In the dignified language of diplomacy; 'Done at Battle in the county of Sussex;' signed as our ambassador at Paris would conclude a treaty of peace for Great Britain." It was by his powers of humor that Cockle succeeded in winning verdicts. He was, unlike Eldon, no lawyer; he was also, unlike Eldon, an admirable punster, and by the mere force of his jokes would drive his opponent out of court. In examining witnesses he never brow-beat or intimidated, he always put them in good humor with themselves, and then drew from them admissions fatal to his opponents. He had, in addressing the jury, an advantage over even Law, afterwards Lord Ellenborough, who was listened to with more reverence, but who did not produce convictions like the worthy serjeant. Cockle was so fond of conviviality, that he has often attended consultations in a state of absolute intoxication.

Mr. Serjeant Bond was an advocate resembling, in many particulars, his brother Cockle. They were both frequently pitted against Serjeant Leblanc, over whom, with his formal starched manner, which always raised a doubt of sincerity, they both had, at least, at *nisi prius*, a very decided advantage. Bond, who was born in Surrey, had a very large practice at the sessions there, and was very fond of making allusions to "my native county," which never failed to tell with Surrey juries. He succeeded in establishing in that county a reputation equal to that which Serjeant Cockle possessed in the North: and many a jury has been known to give as its verdict, "We finds for Serjeant Bond, and costs!"

Thomas Erskine was one of the ablest and most intrepid advocates that ever adorned the bar. His nerve and courage were not easily to be shaken; and no consideration would ever induce him to forbear from trying any point which he considered would benefit his client. His style of speaking was declamatory, but not diffuse—his vivid imagination supplied him with forcible images—which, clothed in language of transparent beauty, never failed to carry the jury along with him.

Erskine would often take laudanum to assist him in speaking. It excited his imagination, and enabled him to make those brilliant appeals to the jury in which he manifested his great powers. Much of this eloquence he owed to his high animal spirits: without such let no one hope to be a *great* orator! His carefulness in getting up his cases was remarkable, although he was fond of pretending that he did every thing in obedience to the mere impulses of the moment. He was not only great on great occasions: in cases of inferior importance, where dazzling eloquence would have been out of place, he was judicious and effective. He had all the timid susceptibilities of genius. When speaking, he would look round to the bar for encouragement. Once, looking at Garrow, and not perceiving any sign of approbation on his countenance, Erskine whispered to him, "Who do you think can get on with that d—d wet blanket-face of yours before him?" He once in addressing a jury observed a barrister sitting near him, whose mouth nature in her wisdom had been pleased to contort. "If that fellow is not removed," he said in a low tone to some one near him, "I shall certainly sit down." He examined witnesses with great discretion, and suc-

ceeded very happily in turning such as displayed great self-conceit into deserved ridicule. Once examining a person who travelled for a great London house, Erskine asked him "if he were not a *rider?*" "I'm a *traveller*, sir," replied the witness, with an air of offended importance. "Indeed, sir, and pray, are you not addicted to the failing usually imputed to travellers?" Erskine was on one occasion of counsel for the defendant, in an action brought to recover the value of a quantity of whalebone. The defence was, that the whalebone was of inferior quality to what it was asserted. The witness by whom Erskine hoped to establish his case was so stupid, that he appeared not to know the difference between *thick* whalebone and *long* whalebone. At length, driven to desperation, Erskine exclaimed, "Why, man, you seem not to know the difference between what is thick and what is long. Now I'll tell you the difference. You are a thick-headed fellow, but you are not a long-headed fellow." He was once retained for a Mr. Bolt, whose character was impugned by Mingay, who was counsel on the other side. "Gentlemen," said Erskine in reply, "the plaintiff's counsel has taken very unwarrantable liberties with my client's good name, representing him as litigious and unjust; so far, however, from this being his character, he goes by the name of *Bolt Upright!*" This epithet Erskine invented for this purpose. Mr. Espinasse relates the following anecdote of Erskine:—"A Mr. Rippingham, an old attorney from the east end of town, was a client of mine and Erskine's. He was a worthy old-fashioned man, particularly attached to the style of dress of his younger days, and retaining it unaltered, despite the changes of fashion. His whole dress was for that

reason grotesque, but his wig especially so. It had two large side curls, and a queue or pigtail, of at least the length of eighteen inches, appended to it. This hung half way down Rippingham's back, and was the subject of a constant joke by Erskine, with our old client, as he sat in court before him. A cause was tried at Guildhall, while Rippingham was so seated. The principal witness was a very eminent surveyor near Gray's inn, a Mr. Wigg. His name was much played upon by Mr. Bearcroft, in urging the credit due to him. When Erskine got up for the defendant: "Gentlemen," says he, "you have had quite enough, I think, of the wig, and 'thereby hangs a tale:'" at the same time seizing Rippingham's pig-tail close to his poll, he cocked it upright at the back of his head with ludicrous effect.

Erskine is said never to have cared for consultations. Mr. Espinasse mentions his accompanying a client one evening to Erskine's chambers. In the room into which they were shown were between thirty and forty phials, each containing a slip of geranium. When Erskine came, he said, "Espinasse, do you know how many sorts of geraniums there are?" "Not I, truly," was the reply. "There are above a hundred," said he, and then, much to the annoyance of the solicitor present, launched out into a long dissertation upon the various merits of each kind. At length he stopped, and said, "Espinasse, now state the case, for I have no time to read my brief." Mr. Espinasse did so, and there the *consultation* ended. The anxious attorney, however, had the pleasure next morning of hearing his case admirably argued by Erskine—"every point put with accuracy, and enforced with eloquence." As an evidence of his indif-

ference to the etiquette of the profession, the following circumstance is remarkable. He had a favorite dog whose name was Toss. This dog he taught to sit up in a chair with his fore-paws placed before him on the table. Erskine would then tie one of his bands round the dog's neck, put an open book between his paws, and introduce him in this attitude to his clients.

Sir Vicary Gibbs, or, as he has been nicknamed, Sir *Vinegar* Gibbs, although his career was not such as to bring him within the scope of our chapter on "early struggles," was in the truest sense of the words, the child of his own deeds. Born the son of an Exeter apothecary, his success arose in no degree from his family connections; but we are not informed that he suffered at any period of his life any of those sad privations through which so many of our eminent lawyers have passed. He abstained from all the amusements of town during his pupilage, devoting himself wholly to the study of his profession. He practised for nearly twelve years under the bar, rising slowly into notice. After his call he came into a very considerable practice, especially in mercantile cases, to the law of which he had particularly devoted himself. He was first brought into public notice by his holding a brief under Erskine, in the trials of Hardy and Horne Tooke for high treason, in 1794; and succeeded, together with his leader, in obtaining a verdict of "not guilty." It was at Horne Tooke's special request, that Gibbs was engaged on this occasion; for Tooke was well aware that his case might need not only an eloquent advocate, but also a good lawyer; and that however admirably Erskine would perform the part of the former, he was by no means equally

qualified for the latter. In his reply, Erskine warmly acknowledged the assistance he had received from Gibbs. "I stood here," he said, "not alone, indeed, but firmly and ably supported by my honorable, excellent, and learned friend." Here he was interrupted by a noise in the court. "I am too much used to public life," he continued, "to be at all disconcerted by any of these little accidents, and, indeed, I am rather glad that any interruption gives me the opportunity of repeating a sentiment so very dear to me. I stood up here, not alone, but ably and manfully supported by this excellent friend who sits by me." In 1805, Gibbs was made solicitor-general, and afterwards, attorney-general. His attorney-generalship was chiefly distinguished by the number of ex-officio informations which he filed against the press. Within three years he filed informations against seventy persons, while in the thirty years preceding 1791, only seventy persons had been prosecuted altogether. "Sir Richard Philips," so writes Sir Richard himself, "was witness in a cause, in which Sir Vicary asserted, in his coarse way, that if any publisher bought a book, without consulting reviews in regard to former works of the same author, he was the greatest fool in Christendom, and ought not to be allowed to walk about without a keeper. Sir Richard, however, said he never read them." A few days afterwards, they were in the drawing room at St. James's. Sir Vicary Gibbs, at a great distance across a crowd of heads, recognised the sheriff, by a continuance of cordial salutations, which were at first gravely received, and not returned; but in a few minutes, he bustled through the throng, and held out his hand—the sheriff smiled, and remarked, that after all which had passed in the

papers, it was strange to see them in that attitude. "Pshaw, sir, do you think I regard newspapers?"—'Yet,' rejoined Sir Richard, 'you have as great an interest in them as a publisher of reviews:' 'You are right, you are right, sir, but you must not expect a pleader to be always logical. The man must be distinguished from the advocate; I hope we are friends, and shall continue so." Waspish and restless as was Gibb's temper, in this instance his anxiety to become reconciled with that most conceited of Pythagoreans showed a right spirit.

Sir Vicary was decidedly deficient in the organ of facetiousness, if such a term has been yet adopted into the nomenclature of phrenology. The following anecdote will show what success attended his efforts to be funny. A clergyman, to whom a licence was refused to a lectureship by his diocesan, because he had preached against infant baptism, applied to the king's bench for a mandamus; and filed affidavits, that such was the effect upon others, that they immediately had children baptised, in whose case the ceremony had been omitted. This denial reminded him, the attorney-general observed, of a nurse, who, in cutting some bread and butter for a child, happened to let the bread fall and exclaimed in a pet, "rot the loaf;" the child reported the exclamation to the mother, when the nurse not only denied the words, but declared she had said "bless the bread."—Gibbs, though an admirable advocate, where clear logical statements and mere ingenuity were required, was not sufficiently acquainted with the world to be effective, in cases where feelings were to be appealed to, and sympathies excited. He said, once, "what can a girl of seventeen know of love? It is pre-

posterous to suppose such a thing possible!" His studious habits in the early part of his life, had debarred him from the opportunity of acquiring much knowledge on this subject. When he appeared as prosecutor, in a case arising out of a riot in a theatre, Mr. Scarlet complained that he had not made sufficient allowance for the impatience of an audience, imputing this to his ignorance of theatrical matters. It was with some warmth Gibbs repelled the imputation, and gravely asserted that he *had been* in a theatre when a young man. Towards attorneys Gibbs nourished feelings akin to any thing but Christian charity. He used to call them the prowling jackals, the predatory pilot-fish of the law. Once, while addressing the court in an action, in which the attorney of one of the parties had played a very disreputable part, Gibbs suddenly exclaimed, looking at his victim, "Does any of you want a dirty job to be done? There stands Mr. Channing the attorney ready to do it." The judge stopped him; but Gibbs would not desist. "I will not be silenced: the fellow deserves to be exposed, and I will expose him." While on the circuit, an attorney, late one night, brought him a heavy brief: Gibbs snatched it from his hand. "Is all this evidence," he inquired, in a sharp quick tone. "No, sir, forty pages are my observations," was the reply. "Point out your observations." It was done; and Gibbs tearing out the sheets, thrust them into the fire, and looking the attorney maliciously in the face, exclaimed, "There go your observations!" Towards the bar he did not show a very courteous spirit. At consultations with his brethren, after stating his own view of the case, he went through the ceremony of asking their opinions, but took care to let them know he held it a

ceremony only, and that his mind was made up.—In court his demeanor was not much more gracious. Upon one occasion he received a severe, but well-merited reproof for his assuming and contemptuous bearing. Mr. Topping was retained as counsel against him; and, disgusted with the presumptuous and overbearing tone of Gibbs, adverted to it most severely in his address to the jury, summoning up his observations with the well-known lines—

> "He doth bestride the narrow world
> Like a colossus; and we petty men
> Walk under his huge legs, and peep about
> To find ourselves dishonorable graves."

The tone and gesture with which this was delivered and enforced, is not to be described. On the bench, Sir Vicary Gibbs is said to have shown greater mildness of character, and to have, in some measure renounced that habit of snarling and cavilling while at the bar, which detracted from his usefulness as an advocate, and his credit as a man. The following anecdote has been related of him, when chief justice of the common pleas: A friend of Serjeant Runnington, who had never before visited the common pleas, having one day accompanied the sergeant to that court, was amused with hearing the judges and counsel addressing each other as brothers, and observed it was the first example he had found of Shakspeare's line,

> "We few—we happy few—we band of brothers."*

* In former times, when the bar of the common pleas was exclusively filled by serjeants, the counsel and the judges were

"We have a different version of that here," said Runnington; "it is 'we, few happy, band of brothers.'" "Whom do you mean by the 'few happy,'" inquired the visitor. "Those who have no business," said the sergeant, "for they do not come in contact with Gibbs." A king's serjeant, since promoted to the bench, is said once to have exclaimed, "I wish Sir Vicary would knock me down at once, and not keep continually pinching me." There is more of exaggeration, probably, than truth in these anecdotes.

Sir Vicary Gibbs died in 1820, leaving behind him a character for great learning, probity, and domestic virtues.

Mr. Garrow was the son of a schoolmaster at Barnet, and was for some time in the office of an attorney in the city. When a law student, he was a member of, and frequent debater at, the celebrated Robin-hood Society, at which Burke was in his early days a constant attendant. It was in this place that Garrow acquired that knowledge of life and manners which enabled him to cope successfully with the acute Topping and the brilliant Erskine.

Mr. Garrow distinguished himself very shortly after he was called to the bar, in the prosecution, at the Old Bailey, of a notorious sharper, who had stolen a bill of exchange, under pretence of getting it discounted. The prisoner had retained some of the

coming constantly into collision. A particularly testy judge of that court, calling a serjeant who was speaking before him, "Brother," a stranger remarked, that he had never before heard a judge apply that fraternal epithet to a counsel. "Oh, sir, said a lawyer, it is nothing uncommon;—they are brothers—that is, *brothers-in-law*."

ablest counsel at the bar, and the leader presuming on Garrow's youth and inexperience, declared, in a presuming tone, that the fact, as proved, did not amount to a felony. Garrow replied with so much readiness and point, that the presiding judge (Mr. J. Heath) left the case to the jury, reserving the point of law for the consideration of the twelve judges, by whom the conviction was affirmed. Of this circumstance, which brought Garrow at once into notice, he was reminded in after life. Some years afterwards, when at the height of his reputation, he was examining a witness in the King's Bench. Among other questions he asked him if he were not a fortune teller. "I am not," replied the witness; "but I can tell yours." "What is that to be?" asked Garrow. "Why, sir, as you made your first speech at the Old Bailey, so you will make your last there." "Witness!" exclaimed Lord Kenyon, quite scandalised, "I shall commit you for your insolence." "Take care, my lord," was the answer, "that you do not commit yourself."

On another occasion, Garrow was examining an old spinster, for the purpose of proving the tender of a certain sum of money having been made, but found some difficulty in making out his case. Jekyll, who was in court at the time, scribbled the following epigram, and threw it over to him:—

"Garrow, submit—that tough old jade
Will never prove a *tender maid!*"

It used to be said of Mr. Garrow that he was not only an advocate, but an actor; and that when silent he did not cease addressing the jury by the change in his features.

The reputation of Mr. Jekyll has extended too far beyond the limits of Westminster hall and the western circuit, to justify our omitting his name. He was, in an age of wits, esteemed a wit; and although, with the usual liberality of the public, the credit of many a *bon mot* has been awarded him which was not fairly his own, sufficient evidence has been preserved of his inexhaustible fund of fanciful humor, to lend color to the fraud. Mr. Jekyll was a whig of the old school—an *elève* of Carlton house; and, although known only at the common-law bar, was, in 1816, appointed a master in chancery. This appointment induced much observation at the time. The most remarkable feature in Mr. Jekyll's character, was his uniform flow of spirits—a temperament which at times renders the individual less susceptible of the impressions of compassion than might be desired. Once Erskine, whose irritable constitution subjected him at times to the attacks of hypochondria, with a lachrymose visage, addressed him in the court of king's bench, complaining "that he had a severe pain in his bowels, and he had tried remedy after remedy, without obtaining relief." "A pain in your bowels!" exclaimed Jekyll, "a pain in your bowels—get yourself made attorney-general Erskine, and then you will have no bowels at all!"

The following *jeu d'esprit* is not unworthy his reputation. Lord Eldon, it should be observed, always pronounced the word *lien* as though it were *lyon*, and Sir Arthur Pigot pronounced the same word *lean*. On this Jekyll wrote the following epigram.

> " Sir Arthur, Sir Arthur, why what do you mean
> By saying the chancellor's *lion* is *lean;*

D'ye think that his kitchen's so bad as all that,
That nothing within it can ever get fat?"

A little fellow, who had scarcely any business, was one day endeavoring to get the judge to attend to a motion he wanted to make—but it was no use; he never could catch the judge's eye. Jekyll looking at the bench, said, in an inimitable tone, "*De minimis non curat lex.*"

A Welsh judge, famous both for his neglect of personal cleanliness and his insatiable desire for place, was once addressed by Mr. Jekyll: "My dear sir, as you have asked the minister for every thing else, why have you never asked him for a piece of soap and a nail-brush?"

Some one told Jekyll that he had been down into Lord Kenyon's kitchen, and saw his spits shining as bright as if they had never been used. "Why do you mention his spit?" retorted the humourist; "you must know that nothing turns upon that." In reference to the same noble Lord Jekyll once observed, that "It is lent all the year round in his kitchen, and passion week in his parlour."

An attorney named Else, rather diminutive in his stature, and not particularly respectable in his character, once met Mr. Jekyll: "Sir," said he, "I hear you have called me a petty-fogging scoundrel. Have you done so, sir?" "Sir," replied Jekyll, with a look of contempt, "I never said you were a petty-fogger or a scoundrel, but I said that you were *little else!*"

Of Mr. Serjeant Hullock, afterwards raised to the bench of the exchequer court, the following striking anecdote has been recorded. He was con-

cerned in a cause of great importance, and was instructed not to produce a certain deed unless it was absolutely necessary. Either from forgetfulness, or from a desire to terminate the matter at once, Hullock, early in the cause, produced the deed, which, upon examination, appeared to have been forged by the client's attorney. Mr. Justice Bayley, who was trying the cause, desired the deed to be impounded, in order that it might become the subject of a prosecution; before this could be done, Mr. Hullock said he wished to inspect it, and on its being handed to him, returned it to his bag. The judge remonstrated, but in vain: "No earthly power," said Mr. Hullock, "shall induce me to surrender it. I have incautiously put a fellow-creature's life in peril, and though I have acted to the best of my discretion, I should never be happy again should a fatal end ensue!" The judge still continued to remonstrate, but declined to act until he had consulted the other judge. The consultation came too late, the deed was, in the meantime, destroyed, and the rascally attorney escaped. Too much praise, however, cannot be given to the honest and intrepid advocate.

Of Sir Samuel Romilly, one of our best lawyers and ablest advocates, a notice will be found in our chapter on "Lawyers in Parliament."

CHAPTER VII.

SKETCHES OF FORMER CHANCELLORS.

Sir Thomes More—Lord Ellesmere—Lord Verulam—Dean Williams—Lord Coventry—Lord Commissioner Whitelocke—Lord Clarendon—Earl of Nottingham—Lord Keeper Guilford—Lord Jeffreys—Lord Somers—Lord Cowper—Lord Hardwicke—Lord Camden—Lord Bathurst—Lord Loughborough—Lord Erskine—Lord Eldon.

History has recorded on her page no brighter name than that of Sir Thomas More.

This excellent man, "vir, doctrina et probitate spectabilis," as Thuanus the great historian calls him, was the first lay chancellor whose importance requires any notice. He was educated at a celebrated school attached to the hospital of St. Anthony, in Threadneedle Street, and afterwards was for some time in the household of cardinal Morton, archbishop of Canterbury, and lord chancellor. From thence he went to Oxford, from which he removed to New Inn, and afterwards entered himself at Lincoln's Inn: "After this," says his son-in-law, Mr. Roper, "to his great commendacion, he read for a good space, a publique lecture of St. Augustine *de Civitate Dei* in the church of St. Lawrence, in the Ould Jurie, whearunto theare resorted doctor Grosyn, an excellent cunninge man, and all the chief learned of the cittie of London." He was then reader at Furnival's Inn, in which honorable post he continued for three years.

"After which time," says Roper, "he gave himselfe to devotion and prayer, in the charter-house of London, religiouslie livinge theare without vowe, the space of fower yeeres." Having married, he became reader at Lincoln's Inn, and was afterwards made under sheriff of London, which office, with his practice at the bar, brought him £400 a year. He refused the king's offer to appoint him one of his counsel, which Cardinal Wolsey, who appreciated his merit, wished him to accept. At the bar, his practice was so considerable, "sith theare was at that time," says Roper, "in none of the prince's courts of the lawes of this realme, any matter of importance or controversie, whearin he was not with the one partie of counsaile." After having filled a variety of offices, he was ultimately made lord chancellor.

Of his conduct, while he held this office, his son-in-law gives the following account:

"He used commonlie everie afternoone to sit in his open hall, to the intent that if any person had any suit unto him, they might the more boldlie come to his presence, and then open their complaints before him. Whose manner was alsoe to reade everie bill himselfe, before he would award any subpœna, which, being matter worthie of subpœna, would set his hande to himselfe, or else cancel yt. Whensoever he passed through Westminster hall to his place in the Chauncery, by the court of king's bench, yf his father (beinge one of the judges therof,) had binne satt ere he came, he would goe into the same court and theare reverentlie kneelinge down in the sight of them all, dulie aske his father's blessinge."

When one of his sons-in-law complained that he received no advantage from being so nearly connected

with him, More told him that it was not so. "For sometimes," he continued, "maie I, by my worde, stande your friende in steede, and sometimes maie I by my letter helpe him; or if he have a cause dependinge before me, at your request *I maie heere him before another;* or, if his cause be not all the best, yet maie I move the parties to fall to some end of arbitrement. Howbeit this one thinge, sonne, I assure thee on my faithe, that if the parties wille at my handes call for justice, then weare it my father stood on one side, and the divell on the other, his cause beinge good, the divell should have right."* So vigorously did he apply himself to his duties, that having one day finished a cause, and called for the next in order, the registrar told him that there was no other waiting to be heard—on which circumstance the following epigram was written:

"When *More* some years had chancellor been
No *more* suits did remain;
The same shall never *more* be seen,
Till *More* come back again."

He resigned the great seal, as is well known, because he could not concur with the court, in the

* This reminds us of the oath of the judges in the Isle of Man—"By this book and the holy contents thereof, and by the wonderful works that God hath miraculously wrought in heaven above, and in earth beneath, in six days and seven nights, I do swear that I will, without respect of favor or friendship, love or gain, consanguinity or affinity, envy or malice, execute the laws of this isle justly, between our sovereign lord the king, and his subjects within this isle, and betwixt party and party, as indifferently as the herring's back-bone doth lie in the midst of the fish." Wood's Account of the Isle of Man.

matter of the king's divorce. The unfortunate fate of this excelient man is well known.

THOMAS EGERTON, VISCOUNT BRACKLEY and EARL OF ELLESMERE, was, during the reign of Elizabeth, lord keeper of the great seal, and master of the rolls.* There is a traditional anecdote extant, "that the queen happening to be in court while Egerton, then at the bar, was pleading a cause against the crown, she exclaimed, 'In my troth, he shall never plead against me again,' and caused him to be made one of her counsel, and afterwards solicitor-general." His rise after this was rapid, until he obtained the honors of the woolsack. James I raised him to the peerage, and made him lord chancellor. In his time occurred that contest between the courts of equity and common law, which is so famous in our judicial history.

He was, like the other statesmen of the times of Elizabeth, a friend to moderate counsels and temperate courses. "*Frost* and *Fraud*," he would say, "both end in *Foul*." Although friendly to the prerogative, he refused to affix the great seal to the pardon that the king had granted to the earl of Somer-

* A strange story is told of Egerton's birth and early life. He was the son of Sir Richard Egerton, and his mother is said to have been a servant maid, named Sparkes, who lived in his father's house. She was so neglected by Sir Richard, as to be compelled to beg her bread from door to door. A neighboring gentleman, a friend of Sir Richard, recognising in the child's features a strong resemblance to him, went to him and representing how disgraceful it was suffering his own offspring to beg, induced him to have his child home, and to give it a good education. This child was afterwards lord chancellor of England.

set "for all, and all manner of treasons, murders, misprisons of treasons, felonies, and outrages whatsoever, by the said Robert Carr, Earl of Somerset, committed, or *to be committed.*" The king, however, highly respected his motives, and venerated the wisdom of his conduct. Most unwillingly did he listen to his servant's request when overcome with age and infirmity, he desired to resign his office. When he received the great seal from him it was with tears. Another account says that the king, by the chancellor's wish, sent for the seal with a message, "that himself would be his under-keeper, and not dispose of it while he lived to bear the title of Chancellor." On his resignation, Egerton was created Viscount Brackley, and afterwards appointed president of the council. He thanked the king for this fresh instance of his regard, saying, however, "that these things were to him but vanities." "Surely all christendom," says Fuller, "afforded not a person which carried more gravity in his countenance and behavior, than Sir Thomas Egerton, insomuch that many have gone to the chancery on purpose only to see his venerable garb (*happy they who had no other business!*), and were highly pleased at so acceptable a spectacle.*

He was succeeded by FRANCIS BACON, LORD VERULAM, VISCOUNT ST. ALBANS,

* Of Lord Ellesmere, Lord Bacon relates the following anecdote. "My lord Chancellor Ellesmere, when he had read a petition, which he disliked, would say, 'What, would you have my hand to this now?' And the party answering 'Yes;' he would say farther, "Well, so you shall; nay, you shall have both my hands to it.' And so would, with both his hands, tear it in pieces."

"England's high chancellor, the destined heir,
In his soft cradle, to his father's chair;"

the renowned statesman, the accomplished lawyer, who was to philosophy at once her lawgiver and her prophet—

"Son to the grave, wise keeper of the seal,
Fame and foundation of the English weal."*

It is sad that this great man can be considered in this place only as having by his fate offered a melancholy warning against the delusions of worldly ambition. No one had formed juster views of his high duties than Lord Bacon. "My part is," said he to "acquit the king's office towards God, in the maintenance of the prerogative, and to oblige the hearts of the people to him by the administration of justice." To a certain extent he discharged these duties to the advantage of his master and the kingdom. Writing to Buckingham, he says, "This day I have made even with the business of the kingdom for common justice; not one cause unheard; the lawyers drawn dry of all the motions they were to make; not one petition unanswered. And this, I think, could not be said in our age before."

Perhaps Bacon has been underrated as a lawyer. In his early life he was anxious to obtain some small post as a maintenance to save himself from the necessity of making law his bread-winner. It was only upon his disappointment in this he applied himself to law. "However," says his chaplain, Dr. Rawley,

* Ben Jonson. Poem on the lord chancellor St. Albans' reaching his sixtieth year.

"notwithstanding he professed it for his livelihood and subsistence, yet his heart and affection were more carried after the affairs and places of state. He applied himself more through necessity than choice to the study of the common law, in which he attained to great excellence, though he made that (as himself said) but as an accessory, and not as a principal study." Elizabeth did not estimate his legal attainments very highly. She said of him, "Bacon has a great wit, and much learning; but that in law he could show to the uttermost of his knowledge, and was not deep." Of Bacon's conduct as a chancellor we know little, except that he was not free from the judicial vices of his times—that corruption and favoritism deformed his character, as well as that of many others who have sat on the bench and the woolsack. It should not, however, be forgotten that he framed some excellent "ordinances for the better and more regular administration of justice in the court of chancery."

James having resolved that the highest office in the realm, the chancellorship, should be no longer filled by a lawyer, after Lord Bacon's unhappy disgrace, the great seal was, for a short time put into commission, and then given, with the title of lord keeper, to John Williams,* D.D. dean of Westminster, who

* Williams was a sharp-witted politician. When the storm was first raised about monopolies and corruptions in government in James's reign, and the Duke of Buckingham was threatened with impeachment, Williams advised the king to sacrifice the chancellor (Lord Bacon) and all the meaner offenders, and to make ample promises of redress. This advice the king received with gratitude, and ever afterwards regarded Williams with favor. After Williams's fall, in 1644, Charles I sent for

had been chaplain to Lord Ellesmere. Dr. Hacket (the lord-keeper's biographer) supposes that Williams was appointed from an affectation of power common among kings. The legal qualifications which he possessed, Hacket thus mentions: During the time he was chaplain to Lord Ellesmere, "he picked up in a short space some gleanings, in his own modest words, in the knowledge of the common laws of this realm, but indeed full sheaves, if his acquaintance may be believed. He remitted not the studies of his own science and profession; but having read the Tenures, the Doctor and Student, and somewhat else like unto them, at hours of relaxation, he furnished himself with no little quantity of that learning by discourse and conference, and inquiring after some cases, how they sped in the courts of justice. When he was at a non-plus, he respited that difficulty till he met with Sir John Walker, whose judgment was most agreeable to his genius. This was his practice, not now, but all along, to gather up more at the interspaces of leisure, than others do at their study." However, in order that he might better fit himself for his new duties, the great seal was continued in commission for *ten months*, during which time he applied himself to his legal studies. Upon taking his seat in the court of chancery, Dr. Williams said,

him to Oxford, to consult him on his affairs. The advice which the ex-keeper gave, proved that his sagacity and foresight had not diminished with age. "*Cromwell*," he said, "is the most dangerous enemy your majesty has; for though he is at this time of mean rank and size, yet he will climb higher. My humble motion to your majesty, therefore, is that either you would win him to you by promises of fair treatment, or catch him by some stratagem and cut him short."

"For my calling into this office, it was, as most here present cannot but know, not the cause but the effect of a resolution in the state, to change or reduce the governor of this court from a professor of our municipal laws, to some one of the nobility, gentry, or clergy of this kingdom." The Dean's promotion, however, seems to have excited general astonishment: it appeared, as Dr. Hacket observes, strange, "that the king should prefer the dean of Westminster to the 'estival solstice of honor,' as Budæus calls it, at one step, who had never passed through the lower ascendant signs of the zodiac of the law." Nothing, however, could exceed the zealous attention that the dean paid to the business of the court of chancery. "He would not excuse himself a day for the most lawful pretence; he would not impart himself to the star chamber, or parliament when it sate, before he had spent two hours or more among the pleaders. Two or three afternoons he allotted every week to hear peremptories; by which unequalled diligence, commonly, he despatched five or six causes in a morning. Of all the causes that were usually set down for hearing, he never left any of them unheard at the end of the term." His expedition did not, however, gratify all the suitors. Sir John Bouchier complained that judgment was given in his cause before his counsel was ready—an inconvenience of which he was presumptuous enough to complain to parliament. The reflection of Dr. Hacket on such conduct is worth extracting. "If," he says, "a suitor shall have power to define when his cause is sufficiently heard, a fiddler would not undertake the office of a judge."

The court of chancery seems to have been no more

popular in James's time, than it has been since. A prisoner, who had been committed to the Fleet, by lord keeper Williams, wrote to Lord Buckingham, complaining of the injustice of his sentence. When Buckingham applied to the lord keeper, he received this answer. "My noble lord, decrees once made must be put in execution, else will I confess this court to be the greatest imposture and grievance in the kingdom. The damned in hell do never cease repining at the justice of God; nor the prisoners in the Fleet at the decrees in chancery. In the which hell of prisoners, this one, for antiquity and obstinacy, may pass for a Lucifer. I neither know him, nor his cause, but as long as he stands in contempt, he is not likely to have any more liberty. A lion may be judged, by his two claws, of his pounce." "After three years' experience," says Hacket, "having now spent so much time in the high court of chancery, his sufficiency was not only competent, but as great as might be required in a complete judge. And it is a slander which one hath published, that this man's successor, the lord Coventry, reversed many of his decrees and corrected his errors." "The Duke of Buckingham," we are told by the same writer, "in the beginning of the next term, at Michaelmas, persuaded the lord chief justice, Hobart, either to deliver it to the king with his own mouth, or to set it under his hand, that the lord Williams was not fit for the keeper's place, because of his inabilities and ignorance; and that he should undertake, thereupon, to cast out the complained, and himself should succeed him. 'My lord,' says reverend Hobart, 'somewhat might have been said at first: but he should do the lord keeper great wrong, that said so now.'" Wil-

liams is said to have been an incorrupt judge, and to have shunned the rock on which his great predecessor wrecked his reputation. The following anecdote, in illustration, is worth reading: "His lordship being retired to Nonesuch, in the summer, took the air in the great park, and viewing from one of the hills the little village of Malden, he espied a church newly built, and asked at whose charge it was done. Mr. G. Minors that attended him, told him who was the greatest benefactor. 'And he hath now a suit depending in chancery?' says the keeper, 'the same,' says the other. 'And the same,' says the keeper, 'shall not fare the worse for building of churches.' Which, being related by Mr. Minors to his neighbor, the gentleman, the next morning, sent a taste of the fruits of his orchard, and of the poultry in his yard, to Nonesuch house. 'Nay, carry them back, George,' says the keeper, 'and tell your friend, he shall not fare the better for sending of presents.' "

The Duke of Buckingham having resolved upon the lord keeper's ruin, soon induced Charles to take from him the great seal. This was entrusted to Sir Thomas Coventry, the attorney-general, as lord keeper—who was afterwards raised to the peerage as Lord Coventry. He was the son of a judge in the common pleas, and had filled the office of solicitor and attorney general, according to Lord Clarendon, "with great abilities and a regular reputation of integrity." He continued as lord keeper until his death, when he had held his office about sixteen years. "In the administration of justice," says Lloyd, "he was so erect, so incorrupt, as captious malice stands mute in the blemish of his fame." "He was a man," says

Lord Clarendon, "of wonderful gravity and wisdom; and understood the whole science and mystery of law, at least, equally with any man who had ever sat in that place. * * * Though by his place he presided in all public councils, and was most sharp-sighted in the consequence of things: yet, he was seldom known to speak in matters of state, which he well knew were for the most part concluded before they were brought to that public agitation; never in foreign affairs, which the vigor of his judgment could well have comprehended; nor, indeed, freely in any thing, but that immediately and plainly concerned the justice of the kingdom; and, in that, as much as he could, he procured references to the judges." Of his judicial character, but few memorials have been preserved to us. His desire of provoking frequent references to the judges, proves how little anxious he was to extend the jurisdiction of his own court—in addition to which, Fuller and Lloyd tell us, that his orders were seldom reversed, because, for the most part, they received the assent of both parties. Carey, writing during the period Coventry had held the great seal, refers to the complaints which were then current, of the delay and expenses of the court of chancery. He mentions a case of two brothers, contesting in that court, the possession of a gold chain worth £60: the suit proceeded until the litigants had expended £100, when the elder overtured to the younger brother, "you see how these men feed on us, and we are as near an end of our cause, as when we began: I will give you one half of the chain and keep the other, and so end this endless cause; and pray let us both make much of this wit, so dearly bought." Lord Coventry, however, appears

fully sensible of the necessity of "chancery reform," and accordingly issued some new "ordinances," [Harg. MS. No. 2377,] which if they had been carried into execution, would have done much towards abating the nuisances then complained of. The first of these ordinances, ordered that "bills, answers, replications, and rejoinders, be not stuffed with repetitions of deeds, or writings, but the effect or substance of so much of them as is pertinent should be set down," &c. Another of the grievances in those days, was that the lawyers prepared the pleadings with "large margins, great distances between the lines, and protraction of words, with many dashes and slashes put in place of words." In short, that they made

> "——— 'twixt words and lines huge gaps,
> Wide as meridians in maps;
> To squander paper, and spare ink,
> Or cheat men of their word, some think."
>
> HUDIBRAS.

The remainder of Lord Coventry's ordinances were distinguished by the same zeal for the improvement of his court; and if they had been carried into operation, we doubt if so many of the evils since complained of would ever have arisen. Buckingham, to whom Coventry owed his rise, as Williams his fall, was exceedingly indignant, that, on several occasions, his ambitious designs were thwarted by the lord keeper. Finding that Coventry was not to be easily moved by threats, he thus accosted him: "Who made you, Coventry, lord keeper?" He replied, "the king." Buckingham exclaimed, "'tis false, 'twas I that made you." Coventry coolly answered, "did I

conceive I held my place by your favor, I would presently unmake myself, by rendering the great seal to his majesty." On this, Buckingham scornfully turned from him, exclaiming, "you shall not hold it long." The dagger of Felton, however, prevented him from keeping his word.

Bulstrode Whitelocke, a lord commissioner of the great seal during the commonwealth, was one of the ablest and honestest lawyers of his time. He was the son of Judge Whitelocke, of whom Charles I gave the character of having been "a stout, wise, and learned man," and who was also much respected by Hampden, and the popular party of that time. Of Whitelocke's conduct, as an equity judge, not much information has been preserved. It appears that he, with his brother commissioners, applied himself zealously to the discharge of his judicial functions, and in one morning they determined thirteen causes, and forty demurrers in the afternoon, (Whitelocke, Mem. 305;) while, in another afternoon they heard thirty five demurrers, (Mem. 394.) His appointment was not worth more than £1500 a-year, and his private practice had brought him nearly £2000 a-year, so that he gained nothing except dignity and title from his elevation. He was opposed to the violent measnres adopted by the popular party; and although he drew up the ordinance for abolishing the house of lords, expressed himself opposed to the change. Against the proposal of bringing the king to trial, he spoke, long and earnestly, in the house of commons; and when he found opposition fruitless, withdrew with his fellow-commissioner, Sir Thomas Widdrington, to his house in the country. After

the execution of Charles, the commons commanded the great seal to be broken, and a new one made, and they nominated Widdrington and Whitelocke to be again lords commissioners. Widdrington refused the honor first, "upon plea of his unhealthfulness;" and then, finding the house would not accept of this plea, on the ground of conscientious scruples. Whitelocke, however, agreed to accept it, for the reason that "he was very deeply engaged with this party," and, "that the business to be undertaken by him was the execution of law and justice, without which men could not live, one by another; a thing of absolute necessity to be done." Whitelocke, however, soon fell into discredit with the protector, chiefly through his "non-compliance with his pleasure in some things, and particularly in some chancery causes;" and not long afterwards, his commission was superseded by a vote of the house, for taking away the court of chancery. Whitelocke was for a short time lord keeper to Richard the protector, and had the great seal afterwards intrusted to him as a member of the committee of safety. He was a facile politician, ready to yield allegiance to any government that was in existence. He was not unaptly designated the "temporizing statesman;" and it was because this designation was apt that he was able, after having taken so prominent a part in the usurping government, to retain his life and property, on the restoration. It is said, that he waited upon King Charles, shortly after his arrival, and intreated his pardon for the offences he had committed against him. Charles bade him hold his tongue, and go home and take care of his *thirty children.* Lord Clarendon said, both of him and Serjeant Maynard, that although "they bowed their

knees to Baal, and so swerved from their allegiance, it was with less rancor and malice than other men: they never led, but followed; and were rather carried away with the torrent, than swam with the stream; and failed through those infirmities, which less than a general defection and prosperous rebellion could never have discovered."

EDWARD HYDE, LORD CLARENDON, is rather known as a great statesman, than as a judicial dignitary. Previous to the great rebellion, he had practised at the bar with great success: but he had relinquished his legal pursuits for twenty years, before he reached the woolsack. "He was a good chancellor," says Burnett, who certainly viewed him with no favorable eye, "only a little too rough, but very impartial in the administration of justice." He never made a decree without the assistance of two judges, and his attendance in chancery was so regular, that it took up the most of his time. But in the lustre of the statesman, the merits of the judge are lost. On Clarendon the following absurd epitaph has been written:—

"Here lies Ned Hyde
Because he died;
If it had been his sister
We shouldn't have missed her;
But we had rather
It had been his father;
But for the *sake of the nation*
The whole generation."

Of the life of LORD KEEPER FINCH, afterwards EARL OF NOTTINGHAM, and lord high chancellor,

little is known. During the great rebellion he became eminent for his attachment to the royal cause, and for his legal attainments, both which obtained for him, on the restoration, the favor of the king and the chancellor Clarendon. Through the interest of the latter, he was made solicitor-general, and knighted. At the bar he rose rapidly into great distinction: so eloquent a pleader did he prove himself, that he was called "the silver-tongued counsel." He was soon made attorney-general, and on lord Shaftsbury's dismissal, lord keeper; a title he afterwards exchanged for that of lord chancellor. "During his time," says Roger North, "the business, I cannot say the justice, of the court flourished exceedingly. For he was a formalist, and took pleasure in hearing and deciding; and gave way to all kinds of motions the counsel would offer; supposing, that, if he split the hair, and with his golden scales determined reasonably on one side of the motion, justice was nicely done. Not imagining what torment the people endured, who were drawn from the law, and then tossed in a blanket." Burnet, who could not forgive Finch for being a Tory, admits that, "he was an incorrupt judge: and that in his court he could resist the strongest applications, even from the king himself." The Duke of Wharton said of him; "His decrees were pronounced with the greatest solemnity and gravity; no man's were ever in higher esteem, had more weight, or carry greater authority at this very day, than his do. He frequently declared that he sat there to do justice; and as long as his majesty was pleased to continue him on that seat, he would do it, by the help of God, impartially to all. His reprimands were mixed with sweetness and severity, and so pointed as to correct, not con-

found the counsel. There may," he adds, "have been persons of more extensive knowledge and greater capacities, but as to the duty and faithful discharge of the office, his lordship never had a superior. To figure this great and inestimable man," he observes in conclusion, "aright, and to paint him in his true colors, and with some warmth of imagination, but still with the greatest submission to strict justice, I would seat him on his throne, with a ray of glory sbout his head, his ermine without spot or blemish, his balance in his right hand, mercy on his left, splendor and brightness at his feet, and his tongue dispensing truth, goodness, virtue, and justice to mankind." He has been charged with having extended the jurisdiction of the court of chancery. One thing is at least certain, that we owe to him in a great measure the system of equity jurisprudence, which, improved by Lord Hardwicke, and illustrated by Lord Eldon, is now, to the great advantage of the subject, administered in that court.

His attention to the business of his court was unremitting. He was once applied to, to re-hear a case which had been for thirty years in chancery. Directly he heard of this, he appointed a day for re-hearing, declaring that he would rather sit five or six days together, than suffer such a reproach to continue.—As a statesman he scarcely comes under our notice; it is enough to say that, together with the tories of that day, he was attached to *things as they were*, indisposed, therefore, to the innovations which the court and the democrats desired to engraft on the constitution. He was a zealous churchman, and his zeal for the church was not simply political. Burnet acknowledges, "that he took great care of filling the

church livings that belonged to the seal with worthy men; and he obliged them all to residence." Writing to his chaplain, Finch used this language: "The greatest difficulty, I apprehend, in my office, is the patronage of ecclesiastical preferments. God is my witness, that I would not knowingly prefer an unworthy person; but as my course of life and studies has lain another way, I cannot think myself so good a judge of the merits of such suitors as you are; I therefore charge it upon your conscience, as you will answer to Almighty God, that upon every such occasion you make the best inquiry, and give me the best advice you can, that I may never bestow any favor upon an undeserving man; which if you neglect to do, the guilt will be entirely yours, and I shall deliver my own soul."

Lord Treasurer Danby having been impeached by the house of commons, and conscious that his ruin was impending, obtained from the king a pardon under the great seal for all his offences, and this pardon he pleaded in bar to the impeachment. This involved Finch in great reproach, but undeservedly so, as it appears that the pardon was prepared unknown to him, and sent to the king. The king commanded Finch's attendance, and on his entering the room, pointing to the pardon, which lay upon the table, desired him to affix the great seal. Finch represented respectfully, but earnestly, to the king, that it was contrary to law to pardon a subject already under impeachment; and finding that his majesty was inexorable, at length dutifully begged to be excused from affixing the seal. The king then took the great seal from him, and desired another person to affix it; and when it was done, returned it to him, saying,

"Here, my lord, take it, I know not where to bestow it better." Nottingham was so rich, that in the latter part of his life, he relinquished the salary of £4000 a-year which the chancellor was entitled to for his expense in maintaining tables, &c. This proves him to have been at least untainted with avarice.

Of Francis North Lord Guilford, an enemy has said that "he never bit but in the right place;" a representation which certainly indicates the most prominent features in his character. His prudence, indeed, would not have been unworthy of Walsingham, and he owed to it his exemption from all the dangers with which the supporters of the court were in those days menaced. Having, in the first instance, filled the chief justiceship of the common pleas, he declined accepting the great seal unless a pension was added to it, which was accordingly done.

If we may credit his brother, North performed his duties with the greatest possible advantage to the public and the suitor. He opposed the constant practice of granting injunctions for stopping the course of the common law. "I remember," says Roger North, "one Barebones, that was called doctor, a famous builder, that over-traded his stock about £1000 per annum, and often wanted injunctions to stay suits at law, finding his designs that way now failing, said to me, 'that his lordship had not sat yet long enough to be a good chancery man.'" He was anxious to introduce a certain and established course of proceedings, like that which regulated the common-law courts; but was still desirous that real and substantial justice should be done to every one whose case came under his judicial cognizance. "I have often

heard him mention," says his gossiping brother, "a poor gentleman that had a very just cause, and was of himself very honest, but had not so much craft as his adversary, who, according to the forms and liberties given in the court and the offices of it, had snares laid for him which caught him; so that the counsel of his adversary, with their usual art, dressed him up in circumstances colorable as they set them out, and made him look as like a very knave, as if he had been so in earnest. This was all surprise to him; and his own counsel was not instructed and ready enough to wipe him clean; and he not having elocution to speak for himself, took the matter so much to heart, as that he went home, and, in a fit of sorrow, died."

North, who was created Lord Guilford, was, like Lord Nottingham, a member of the tory party, and therefore indisposed to accede to the policy of James and his brother. He appears to have been an able, shrewd, calculating politician, "indifferently honest," a good lawyer, and useful judge. We proceed to give a brief account of his great opponent,

George Lord Jeffreys, whose name has been handed down to the execration of posterity as a cruel and remorseless tyrant, and who cannot, with any propriety, be omitted from our legal portrait gallery. He began his career as an advocate at the age of eighteen, two years before he was called to the bar. The plague had thinned the lawyers, and frightened the remnant it had spared. Jeffreys' first field of practice was the courts at Guildhall and Hicks's hall, and others of a like kind, where his bold and confident bearing did him good service. A satirist has said in allusion to his manner—

"Oft with success this mighty blast did bawl,
Where loudest lungs and biggest words win all."

He, however, soon succeeded in establishing himself, and by the interest of two aldermen who were his namesakes, but noways related to him, obtained the appointment, first, of common serjeant, then of recorder to the city of London. This latter office he was compelled to resign by the country party, to whom he became obnoxious, as well for his joining the high church party, as for his ready concurrence in all the designs of the court. In the popish plot, and in the various government prosecutions in those times, Jeffreys was constantly employed, and acquitted himself so much to the satisfaction of the court, that, on the death of Sir Edmund Saunders, he was made chief justice of the King's bench. He proved himself in this capacity the willing instrument of royal vengeance. It has been well said of him, that "so as he rode on horseback, he cared not whom he rode over." His conduct to Algernon Sidney at his trial, the inhumanity with which he acted towards the deluded victims of the unhappy Monmouth, are well known. They, however, formed his best reccommendation to favor in the eyes of the tyrant James, who accordingly made this brutal judge his chancellor. In this capacity he was enabled to serve his master still more effectually; but the arrival of the prince of Orange, * and the flight of the king, soon terminated the career of his insolence.

He died in the tower after a short confinement, whether of a broken heart, or of disease, or, as some

* It appears that a patent was made out shortly before the king's flight, creating Jeffreys earl of *Flint.*

have said, of a too frequent application to the bottle, has not been ascertained. His private character was stained with vice. Burnet says of him that he "was scandalously vicious, and was drunk every day, besides a drunkenness of fury in his temper that looked like enthusiasm." Bevil Higgons, a favorable witness observes, that if he "exceeded the bounds of temperance now and then, it does not follow that he was drunk *on the bench and in council.*" Roger North says he used to drink and talk with "good fellows and humorists;" and so he would unbend himself in "drinking, laughing, singing, kissing, and every extravagance of the bottle." When he was judge, an old man with a large beard was examined before him. His evidence displeasing Jeffreys, he said, "If your conscience is as large as your beard, you'll swear anything." The old man replied, "My lord, if your lordship measures consciences my beards, your lordship has none at all."

Sir John Reresby says that he once dined with Jeffreys, the lord mayor and several other gentlemen being of the party. Jeffreys, according to his usual custom, drank deep at dinner, and after the cloth was cleared, sent for one of his servants who had been a comedian, and was famous for his powers of mimicry, to divert the company. This man feigned to plead before Jeffreys, imitating the gesture, tone, deportment of all the great lawyers of his age, in so perfect a manner as exceedingly delighted the chancellor. On one occasion he is said to have been nearly carried off by an attack of illness which was produced by an over-indulgence in wine. It is said that so much elated was he and the lord treasurer, that they took off the greater part of their clothes, and had not they

been accidentally prevented, would have climbed up a sign post to drink the king's health.

Of LORD SOMERS, Horace Walpole has said that "he was one of those divine men, who, like a chapel in a palace, remain unprofaned, while all the rest is tyranny, corruption, and folly. All the traditional accounts of him, the historians of the last age and its best authors, represent him as the most incorrupt lawyer, and the honestest statesman, as a master orator, a genius of the finest taste, and a patriot of the noblest and most extensive views; as a man who dispensed blessings by his life and planned them for posterity." The most eminent lawyer of the whig party, when the nation had become convinced that the evils of the court of chancery were aggravated by the presidency of commissioners, the great seal was intrusted to him, first as lord keeper, and afterwards as lord chancellor. He was selected, however, by Willliam III, to fill this high post, not because of his legal attainments, but because of his knowledge of political affairs, and his attachment to the principles asserted and established at the Revolution.

He was the son of a Worcester attorney, whose zeal for the popular cause induced him to bear arms under Cromwell. The youth of the future chancellor, did not want auguries of future eminence. It is affirmed that when a child, walking with his aunt, a beautiful roost-cock flew upon his head, and crowed three times, with peculiar energy. This tradition has better evidence in its favor, than similar stories have, but we will not undertake to vouch for its authenticity. After completing his education at school and college, he entered at the middle temple, and was

fortunate enough to attract the notice and receive the patronage of the solicitor-general, Sir Francis Winnington.

Somers, it is said, held the situation of clerk to Winnington, and thus had an opportunity of acquiring a practical knowledge of the law. Previous to his call to the bar, his steadiness and attention excited the pride of his father. The old man used frequently to visit London in term time, and always put up his horse at the George Inn, at Acton—where he often mentioned his promising son, at the Temple. One day, the landlord hearing him dwell with such heartfelt pride, on the merits of his son, said to him, "Why don't you let us see him, sir?" Accordingly, when Mr. Somers returned, he begged his son to accompany him on his way, as far as Acton. Having arrived at the inn, the father took the landlord aside, and said to him, "I have brought him, Cobbet, but you must not talk to him as you do to me; he will not suffer such a fellow as you in his company."

After he was called to the bar, Somers was much employed by the whig party, whose cause he had supported by his pen. The first great cause in which he was retained, was the trial of the seven bishops, in which he was counsel for the defence, together with others, "all of them," says Lord Camden, "lovers of liberty and the greatest lawyers of the age." The bishops, amongst themselves, objected to Mr. Somers, as too young and obscure a man; but Mr. Pollexfen, who was afterwards lord chief justice, insisted upon his great abilities, and declared that he would himself take no share in the defence, if Mr. Somers was not associated with him. He represented to the bishops that Somers would take the most pains, and that his

knowledge of precedents and records, would be of great service. After the revolution, in which happy event Somers played a considerable part, he was made solicitor-general, afterwards attorney-general, and thence advanced to the post of lord-keeper. The exceeding gentleness of his manners, it has been said, disqualified him for this high dignity. It would be well for men, if their enemies could object nothing more serious against them.

During the seven years he held the great seal, not a single imputation of corruption or partiality was advanced against him. Dr. Garth, no friend to lawyers in general, in one of the earlier editions of his "Dispensary," bears testimony to the merits of his judicial character. He says,

"Somers doth sick'ning equity restore,
And helpless orphans now need weep no more."

His fall was owing to a political intrigue.

Lord Cowper was distinguished in his early life rather for the licentiousness of his conduct, than for any promise of the future eminence to which he afterwards attained. While very young, he was engaged in an illicit connection with a Miss Ailing, the owner of Hertingfordbury Park, near Hertford, by whom he had three children. A rumor, that he had deceived her with an informal marriage, induced Swift to fasten on him the nickname of "Will Bigamy." At the age of twenty-five, he was appointed solicitor-general to Queen Mary, and one of the counsel to her husband William III. In his fourth year, he was reluctantly appointed by Anne, lord

keeper of the great seal, and distinguished himself by putting a stop to the custom of receiving what were called new year's gifts from the officers of the chancery, which had of late years amounted in value, to nearly £1500. When Harley and the tories succeeded in subverting the influence of the whigs, in 1710, every effort was made to retain Cowper—but he waited on the queen, and surrendered to her the seals. She entreated him to pause, before he determined on retiring, and declared herself surprised at his wish. Three times she returned the seals into his hands after he had laid them down, and at length laid her commands on him, to take them up again, adding, "I beg it, as a favor, if I may do such a thing." Cowper of course could refuse her request no longer, and after a little conversation, said, that he would accept them for the present, on condition he might resign them the next day—on the next day, accordingly, he again waited on her Majesty, who received from him the insignia of his office.

Of Lord Cowper, Charles Yorke relates the following anecdote. Richard Cromwell was party to some proceedings before the court of chancery, in Lord Cowper's time, and the counsel on the opposite side made very free with his name, and not sparing allusions to that "arch traitor," old Noll. This hurt Lord Cowper's feelings, who knew that Cromwell must be in court. In order to check the barrister, he looked round and said, "Is Mr. Cromwell in court?" Upon this Cromwell was pointed out to him, and he immediately said, "Mr. Cromwell, I hear you are incommodiously placed where you are, pray come up and take a seat on the bench beside me." Of course, no more allusions were made

against him. Bulstrode Whitelock (a son of the Lord commissioner), who was then at the bar, observed to Yorke (afterwards Lord Hardwicke), when he saw Cromwell seating himself beside the chancellor, "This day, so many years, I saw my father carry the great seal through Westminster hall before that man."

On the accession of George the First, he returned to office, which he held until the violence of party compelled him to retire once more into the ranks of opposition. As a lawyer, Lord Cowper takes high rank—and was in every way superior to his rival, Lord Harcourt.

Cowper was a friend to men of letters—to him Hughes the poet dedicated his "Siege of Damascus." The chancellor had read the play in manuscript, and was so delighted with it, that he made the author secretary to the commission of the peace, and on retiring from office, recommended him to Lord Parker, his successor.

"LORD CHANCELLOR HARDWICKE," as it has been observed by Lord Chesterfield, "valued himself more upon being a great minister of state, which he certainly was not, than upon being a great chancellor, which he certainly was." It is, however, as a great lawyer—as the first equity lawyer of his own or any other age—that Lord Hardwicke will be remembered: of the numbers to whom his name is familiar, how few are there, that know any thing of his political career?

Philip Yorke was the son of a Dover attorney, and at an early age was placed with Mr. Salkeld, an attorney in Brook Street, Holborn, who could boast

that he had, within a short time of one another, in his office, Yorke, afterwards lord chancellor of England; Jocelyn, afterwards lord chancellor of Ireland; Parker, afterwards chief baron of the exchequer; and Strange, afterwards master of the rolls. Salkeld was a man of considerable knowledge and talent, and Yorke derived much advantage from his instruction. By his advice, Yorke entered himself at the Middle Temple, and shortly afterwards attracted the notice of Lord Macclesfield, who became so much attached to him, and distinguished him so much, that, very soon after his call, he obtained a very large practice. The seniors at the bar were astonished at his rapid progress. Judge Powis, a worthy dignitary, whose intellectual powers were not esteemed very bright, dining in his company one day, endeavored to obtain a solution of the mystery of his success. He began with a bold conjecture. "Mr. Yorke," said he, "there is scarcely a case before the court, in which you do not hold a brief for the plaintiff or the defendant; from which I conceive that you must either have published some important book, or are on the eve of publishing one." Yorke's ready wit did not desert him; he gravely replied that his lordship's conjecture was well founded; he had such an intention." "Indeed, Mr. Yorke," rejoined the judge, "and may I be permitted to inquire the subject." "Most certainly, my lord," returned Yorke; "I propose to publish a poetical version of Coke upon Littleton." Upon this, the judge requested him to recite a specimen, from which Yorke begged to be excused; but Powis would take no denial, and Yorke, trusting to his invention, recited, with great emphasis—

"He that holdeth his lands in fee,
Need neither to shake nor to shiver,

I humbly conceive, for look, do you see,
They are his and his heirs for ever."

Five years after he had been called, and before he had completed his first circuit, Yorke was made solicitor-general, to the astonishment and indignation of the whole bar. His learning and amenity of manners, however, soon reconciled them to his appointment, and he passed through that and the office of attorney-general with universal applause and admiration. Whilst filling the latter office, the chancellorship and chief justiceship of the King's Bench both became vacant. Sir Robert Walpole, who wished that Talbot, the solicitor-general, should be chancellor, had some difficulty in inducing Yorke to waive what he considered his just claim to that dignity. However, avarice was Yorke's ruling passion, and his ambitious pretensions were readily resigned, when he was promised, that, if he would accept the chief-justiceship, the salary should be raised from £2000 to £4000 a year, and that he should also be elevated to the peerage. After having bargained that the offered increase of salary should not be made personal to himself, but continued to his successors, Yorke acceded to the terms, and was appointed chief-justice, and created Baron Hardwicke.

For three years and a half Lord Hardwicke presided with honor to himself, and advantage to his country, over the court of King's Bench, and showed much unwillingness to relinquish his post for the great seal, which was then pressed on his acceptance by Sir Robert Walpole. Walpole discovering his reluctance, resorted to the following expedient to overcome it. "Well, my lord," he replied, when Lord Hardwicke stated that he

was unwilling to accept an office, whose tenure was so precarious, "if you persist in declining the great seal, I have resolved on another as chancellor. The office shall be offered to Mr. Fazakerly," an eminent chancery barrister of the day. "Fazakerly!" exclaimed Lord Hardwicke, his jealousy alarmed, "Fazakerly! Are you aware, Sir Robert, that Mr. Fazakerly is an avowed Tory, and, for aught I know, a confirmed Jacobite?" "Likely enough," replied Walpole coolly, "but (laying his watch on the table) if by one o'clock you have not accepted my offer, by two, Fazakerly shall be lord-keeper of the great seal, and one of the staunchest Whigs in England!" This reasoning soon decided Lord Hardwicke, and the minister gained his point. It is a remarkable thing that after he had taken his seat in the court of chancery for the first time, he went into the king's bench and delivered judgment in a case that had previously been argued before him, thus presenting the singular spectacle of one individual presiding in the two principal courts of law and equity on the same day. It has been understood that shortly before his retirement from the woolsack, Lord Hardwicke decided the cause in which he held his first brief, after his call.

To dwell at any length on the merits of Lord Hardwicke as an equity judge, would be unprofitably occupying our space, and probably non-professional readers would consider us to have exchanged the office of a biographer for that of a panegyrist.

Avarice was Lord Hardwicke's predominant passion. It was in this way that he got the name of "Judge Gripus." He was one of a commission which, in the year 1740, reported in favor of some very extensive reforms in the court of chancery; but although

he concurred in this report, and possessed the ability of carrying the recommendation which it embodied into effect, he made no effort towards such an end, preferring the continuance of abuses to any change which would reduce his income, or diminish his patronage.

"My lord," George II, one day said to him, "I observe that there never is a place vacant, but you have some friend on whom you wish it to be bestowed."

He was fortunate in a wife,* in whose estimation, frugality was the first of virtues. By ancient custom the embroidered purse which holds the great seal is annually renewed; and the old purse becomes the perquisite of an officer of the court. Lady Hardwicke, however, insisted that it should be given up to her, and actually lined the walls of one of the state-rooms at Wimpole with the velvet she obtained in

* Against Lady Hardwicke, the chancellor used to tell the following story. His bailiff, Woodcock, having been ordered by her ladyship to procure a sow of the breed and dimension that she particularly described to him, came one day into the dining-room, when full of people of consequence and distinction, and in a tone of exultation, he exclaimed, "Oh, my lady, I have been to Royston Fair, and have got a sow exactly of your ladyship's size!" Of Lady Hardwicke the following anecdote has also been narrated. Her ladyship one day sent for Aaron Franks, the celebrated diamond merchant, and when he arrived received him in a very confidential manner. "Mr. Franks," said her ladyship, "I want to make my daughter, Lady Anson, a present of a jewel something about £2000." That was soon arranged, and then came the real business. "And can you," said she, "tell me of any good match for one of my sons? But Franks," she continued eagerly, "she must be rich—she must be rich, Mr. Franks, or it would not do." This method of obtaining a wife, will sound strange in the ears of modern refinement.

this way. By this lady's desire, Lord Hardwicke deferred his acceptance of an earldom, which was offered him for many years after the offer was made, until, in short, the marriage of his daughters; for, as Lady Hardwicke observed, though no suitors would expect more than £10,000 with the Misses Yorke, yet not less than £20,000 would be anticipated with Lady Elizabeth and Lady Margaret.

Jealousy also must be ranked amongst Lord Hardwicke's failings. He is known to have resisted the wishes of the minister, to raise to the peerage several eminent lawyers—Parker, Lee, Ryder, and Willes, particularly the last. He desired to be the only law lord, so that an appeal from the court of chancery might be from Julius to Cæsar, from Lord Hardwicke, in Westminster Hall, to Lord Hardwicke, in the House of Lords.

His contemporaries have recorded that, though somewhat ostentatious, and in no ways extravagantly hospitable, Lord Hardwicke was agreeable in his manners, and lively in his conversation; he was also temperate in his habits. When attorney-general, he was dining in company with lord Bolingbroke, who asked him if he had not been a rake in his younger days—to which he replied, that "he must confess that he never was a rake; for that, indeed, he was so early immersed in business, that he never had any time to be one." Lord Bolingbroke, on this professed himself satisfied with the reason that Yorke had assigned for his abstinence from dissipation, "for I am persuaded," he continued, "that no one could ever distinguish himself, and make his way in life as you, Sir Philip, have done, unless he had been a rake, or, at least had had the seeds of a rake in him."

Lord Hardwicke, as a politician, was timorous. He was always haunted with the horrors of invasion from France, in flat-bottomed boats; but, with all his failings, was, if not a great man, at least a great lawyer.

Passing over Northington, whose eccentricities have obtained for him a conspicuous place in another part of our work, we come to the name, so dear to the lovers of constitutional freedom, of CHARLES, EARL CAMDEN. He was, however, remarkable rather for the boldness and firmness that distinguished his conduct, when seated on the bench of the common pleas, than for any thing which characterised him, during the four years in which he held the great seal. His conduct, in reference to Wilkes, is well known. Wilkes, who had been arrested by a general warrant under the hand of the secretary of state, was brought up before him by *habeas corpus*—Camden, (then Sir Charles Pratt) desired him immediately to be discharged, and, when Wilkes afterwards brought an action against the messenger, by whom he had been arrested, took occasion to declare his opinion that general warrants—except in cases of high treason—were illegal, oppressive, and unconstitutional. The popularity which he acquired by this act, was excessive, nor was it materially, or at least permanently, diminished, when he, as lord chancellor, supported the ministers in laying an embargo, by an order in council, on the exportation of wheat in contravention of the existing law.

Horace Walpole speaks of him, at the time of his attorney-generalship, as being "steady, warm, sullen, stained with no reproach, and an uniform whig."—He owed his accession to the woolsack to his steady adherence to the principles of Pitt, who, when raised

to the dignity of prime minister, secured the assistance of his friend in the cabinet.

Lord Camden, however, did not prove a very staunch supporter of the ministry, who were, at last, glad to remove one who loved liberty better than party—was more attached to his country than to his political patrons. He was some years afterwards lord president of the council. As a lawyer, lord Camden will always be esteemed very highly. "His eloquence," says Mr. Butler, "was of the colloquial kind—extremely simple; diffuse, but not desultory. He introduced legal idioms frequently, and always with a pleasing and great effect. Sometimes however, he rose to sublime strains of eloquence: but the sublimity was altogether in the sentiment; the diction retained its simplicity; this increased the effect." In parliament, and sometimes on the bench, he was fond of indulging in declamation, imitating in that respect, his illustrious friend, lord Chatham, whose speeches, however effective they may have proved at the time,—and effective they did prove,—read turgid and bombastic.

He was, during the time he was chief justice, staying with Lord Dacre, in Essex. One day, accompanied by a gentleman, well known for his absence of mind, he took a walk, in the course of which he ascended a hill near the house, at the top of which stood the parish stocks. After sitting down near them for some little time, the chief justice expressed a wish to know of what kind the punishment was, and begged his companion to open the stocks and let him try.—This was accordingly done, and the gentleman, taking a book from his pocket, sauntered on, and not until he had returned to Lord Dacre's did he recollect that

he had left the chief justice in so awkward a situation. When the learned judge was tired, he tried to get out, but found he could not release himself; he asked a countryman, who was passing by, to let him out: the rustic stopped, looked at him, grinned, and shaking his head, walked on, saying, "No! no! old gentleman, you wasn't set there for nothing." Some servants, sent from lord Dacre's, soon after this, rescued him from his novel situation. He, sometime afterwards, presided in the trial of an action for false imprisonment, brought against a magistrate, by some fellow, whom he had set in the stocks. The counsel for the defendant, ridiculed the charge, declaring, that setting in the stocks, was, as every body knew, no punishment at all. The chief justice rose, and stooping over, said to the counsel, in a loud whisper,— "Brother, were you ever in the stocks?" "Really, my lord, never." "Then I have," said the chief justice, "and can assure you, that it is not the trifle you represent it." Lord Camden, like his great rival, lord Mansfield, was very intimate with Garrick, in whose private correspondence, published a few years ago, many letters from the chancellor may be found. One day, Garrick met Boswell in the street, and thus addressed him, "Pray, now did you—did you meet a little lawyer turning the corner, eh?" "No, sir," replied Boswell; "pray what do you mean by the question?" "Why," returned Garrick, affecting indifference, "lord Camden has this moment left me."—When Boswell mentioned this to Johnson, the great moralist said' "Well, sir, Garrick talked very properly; lord Camden *was* a little lawyer, to be associating so familiarly with a player!"

The career of LORD CHANCELLOR BATHURST was not such as entitles him to any prolonged notice in this place. The son of a peer—the Lord Bathurst, with whom Pope and Swift were so intimate—he was in early life brought into parliament, where he distinguished himself by attacking the court, and was in consequence made solicitor, and afterwards attorney-general to Frederick, Prince of Wales. The death of his patron, by destroying his hopes, seems to have changed his opinions, and he succeeded in so far mollifying the ministry, that he was made, in 1754, a judge of the common pleas, and on the death of Charles Yorke, one of the commissioners to wbom the great seal was intrusted. The decrees of the commission, it is said, were prepared by Lord Mansfield, and amongst them was the famous Burton Pynsent case, which was afterwards reversed on appeal to the house of lords. After the lapse of a year, the great seal was given to Mr. Justice Bathurst, with the dignity of lord chancellor, and the title of Baron Apsley.—"What the three could not do," sarcastically observed Sir Fletcher Norton, "was given to the most incapable of the three." His incapacity as a lawyer soon became evident. Somebody told Wilkes, before he was elected lord mayor, that Lord Apsley would have to inform him that the king did not approve of the city's choice. "Then," he replied, "I shall signify to his lordship that I am at least as fit to be lord mayor, as he to be lord chancellor." And Wilkes was not far wrong. Bathurst, it is said, was conscious of his inefficiency. For the two years and a half that he and Lord Weymouth sat together in the cabinet, the latter used always to decide the law questions that came before them in their ministerial

capacity. His father, who was a jovial old gentleman, and died four years after his son became chancellor, had once a large party staying with him at Oakley. One evening their conviviality having been long protracted, the chancellor, after dwelling at some length on the importance of early hours to health and longevity, was allowed to retire. When he had gone, his father exclaimed, "Now, my good friends, since the *old* gentleman is off, I think we may venture to crack another bottle." The chancellor was, however, himself exceedingly cheerful and good humored. The following anecdote will show that he was possessed of a lively wit. One session of Parliament there were an unusual number of bills sent up from the commons in so imperfect a state, that they were obliged to be amended in the lords. Among them was one brought in by Mr. Gilbert, famous for his activity in establishing and reforming houses of correction. When he brought his bill up to the lords, the chancellor said to him, smiling, "You have been a long time, Mr. Gilbert, wishing for a good *house of correction*, and I now congratulate you on having found one; for this house has been nothing but a house of correction for the errors and mistakes of your house this whole session!"

For thirteen years Lord Loughborough filled the post of chief justice of the common pleas. As a judge, he is said to have displayed much knowledge of the law, and an affable and courteous demeanor to counsel and juries. He was mild in his administration of justice, whilst he vigorously resisted every attempt to relax the rigor of criminal jurisprudence. During the debate on the reform of the

criminal laws, in 1811, the following anecdote was related, which will illustrate at once the humanity of Lord Loughborough, and the impolicy of leaving the law in the state in which it was then. "Not a great many years ago, on the Norfolk circuit, a larceny was committed by two men in a poultry-yard, but only one of them was apprehended. This man was tried at the next assizes, found guilty, and sentenced by Lord Loughborough *to a few months imprisonment*. When the accomplice heard of this, he surrendered, and was tried the following assizes. Unfortunately for him, the presiding judge was Mr. Justice Gould, who had observed or fancied that a man who sets out with stealing fowls, generally ends in committing the most atrocious crimes—as a consequence, he sentenced the criminal to *transportation*."

In 1793, upon the junction of "the old whigs" with the conservative government of the day, Lord Loughborough was raised to the woolsack, and continued chancellor until Mr. Pitt went out of office, in 1801. "His judicial oratory," says Charles Butler, "was exquisite. All must acknowledge the perspicuity, the luminous order, and chaste dignity of his arguments. Like Lord Camden, he frequently and successfully introduced law phrases into them. His greatest failings were, that he too clearly showed his want of attention to much of what he heard at the bar, and his want of real taste for legal learning." The following instance of the integrity of his judicial character is related by Sir John Sinclair. "It is well known how closely he (Lord Loughborough) was connected with the Duke of Portland. The marquis of Titchfield, the duke's son married Miss

Scott, the eldest daughter and joint heiress of General Scott. Besides the immense property left by her father, he had likewise a claim by the death of her relation, Sir Robert Gordon, to a valuable estate in the county of Moray. The fifth claimant was Mr. Cumming, of Altyr, and in the litigation before the court of session, a decision was given in his favor. There was an appeal to the lords, when Lord Loughborough sat on the woolsack. Knowing that in the particular circumstances of the case, the eye of the public would be upon him, he earnestly requested Lord Thurlow's assistance in deciding the question. It is singular that Lord Thurlow's opinion was favorable to Lord and Lady Titchfield; whereas Lord Loughborough thought the decision should be in favor of Cumming. Had he chosen to acquiesce in the opinion given by Lord Thurlow in favor of the Titchfield family, a large property would have devolved on the son of his friend; but greatly to his credit he decided in favor of Mr. Cumming."

In his political character, Lord Loughborough is not entitled to much respect.* Attached at one part of his life to the Foxite party, he deserted them at

* Churchill has severely lashed him for his pliant temperament, in one of his satires published in 1762.

"To mischief train'd e'en from his mother's womb,
Grown old in fraud, though yet in manhood's bloom;
Adopting arts by which gay villains rise,
And reach the heights which honest men despise;
Mute at the bar, and in the senate loud,
Dull 'mongst the dullest; proudest of the proud;
A pert, prim prater of the northern race,
Guilt in his heart and famine in his face,
Stept forth".——

the precise moment when his desertion obtained for him the great seal. Whilst, however, in their ranks he did not do them much service in advising the ill-omened coalition, and still less in inducing Mr. Fox to make the unfortunate declaration which he did respecting the prince's right to the government, on the agitation of the regency question, in 1789.

In the disposition of the church preferment, of which he had the patronage, he showed great judgment. His demeanor towards the numerous applicants, by whom he was constantly assailed, is said to have been marked with kindness and urbanity. When he gave away a living to one whose merits constituted his only recommendation, he would say to him, "Go to my secretary and desire him to prepare the presentation for my fiat immediately, or I shall have some duke or great man making application, whom I shall not be able to refuse."

Lord Erskine, to whose transcendent merits as an advocate, we have already paid fitting tribute, owed both his title and official dignity to his faithful attachment to Mr. Fox during the critical period of the French Revolution. To the king, Erskine was personally obnoxious from his having undertaken the defence of Tom Paine. When the arrangements for the "Talents" administration were in the course of settlement, Fox submitted to the king a list of such persons as his party considered eligible for the chancellorship. At the head of this list was Erskine's name—placed there not under any expectation that the king would consent to his appointment, but merely as a mark of esteem and regard. The king, however, did not make the anticipated objection. He

merely observed, "Well, if Mr. Erskine must be chancellor, remember he is *your* chancellor, and not mine; and Mr. Erskine was, accordingly, made chancellor, much to his own astonishment and that of all his friends. The surprise which they manifested arose simply from the knowledge how much he was disliked by the king. A stranger ignorant of our judicial system, might also have found matter for surprise in the fact, that a lawyer, whose practice had been confined to the common law courts, was placed at the head of the first equity court in the kingdom. If, too, he had heard any thing of the boasted independence of our judges, and their freedom from political influence, his surprise could not be diminished when he had learnt that this strange transformation had been made solely on political considerations. But this is the fault of the system, and not of Lord Erskine. Erskine labored under another disqualification. He was an advocate rather than a lawyer: he had not even the advantages which an intimate knowledge of our common law would have afforded him. Fortunately for his fame, his colleague did not give him much time for displaying his incapacity. Of his judicial character all that can be said is, that he displayed a readiness and tact which enabled him to get through business very rapidly, and which is precisely the sort of merit that a nisi prius advocate raised to the woolsack might be expected to show. From the bar he received every possible assistance, and his conduct towards them was marked with the urbanity natural to his character. Lord Eldon said of him—and the testimony is honorable to both parties—that none could have a greater wish to discharge properly the duties of his

office, nor greater abilities to qualify for their due discharge. Of his personal character the most prominent features was his intense vanity and egotism. "Lord Erskine," says Lord Byron, "was the most brilliant person imaginable: quick, vivacious, and sparkling, he spoke so well that I never felt tired of listening to him, even when he abandoned himself to the subject of which all his dear friends and acquaintances expressed themselves so much fatigued—self. His egotism was remarkable, but there was a *bonhommie* in it that showed he had a better opinion of mankind than they deserved. Erskine had been a great man, and he knew it." Egotism, in such a man, is pardonable; but it is a sin, to which pardon is rarely accorded. Most men are too egotistic to endure an egotist. From Buonaparte, "Counsellor Ego," as Erskine was denominated in the caricatures of the day, received a very severe mortification. After the peace of Amiens he visited Paris, and one day attended the First Consul's levee, in company with Mr. Fox, Lord Holland, Lord Egremont, and other distinguished countrymen. Not unnaturally he expected that, when presented, Buonaparte would pay him some compliment, in reference to his forensic abilities or his eloquence. The master of the ceremonies announced him to the consul as *Mons. le Chevalier Ayreshine.* Buonaparte slightly looked at him—took a pinch of snuff.—"*Ayreshine, Ayreshine!*" he said, "*Etes vous legiste?*" Erskine bowed and fell back into the circle.*

* Lord Abinger says that Buonaparte asked Erskine whether he had ever been Lord Mayor of London! He is said to have put the same question to Mr. Fox.

He was remarkable for a vein of lively *drollerie.* By nature he was quick and vivacious, overflowing with good humor, and always full of the highest spirits. One day dining with Sir Ralph Payne (afterwards Lord Lavington), he found himself so unwell, that he was forced to retire into another room, till the cloth was cleared. Upon his return to the company, Lady Payne* anxiously inquired of him, how he felt. He immediately took up a pencil and scribbled this couplet—

"'Tis true I am ill, but I cannot complain,
For he never knew pleasure, who never knew pain."

Many of the jeux d'esprits he made in court, have been preserved. The two following are among the best. Mr. Justice Ashurst was remarkable for his lank and sallow physiognomy. On him Erskine indited this couplet:

"Judge Ashurst, with his *lanthorn* jaws,
Throws *light* upon the English laws."

The following distich on Judge Grose, is rather too severe—

* This lady had a monkey whom she did like, and a husband whom she did not. Unfortunately the husband survived the monkey. The day after the death of Ned (such was the monkey's name), Sheridan entered her ladyship's drawing-room. and found her in tears. "Oh! Mr. Sheridan, poor Ned's gone." "Dear me," says Sheridan, "let me write him his epitaph." Which forthwith he did in these words:—

Alas! poor Ned,
My monkey's dead;
I'd rather by half
It had been Sir Ralph."

"Qualis sit Grotius judex, Juno accipe versu,
Exclamat, dubitat, balbuit, stridet, et errat."

When he was at Cambridge he was once detained from dinner, by the negligence of Coe, the college barber, on whom he revenged himself by parodying Gray—

"Ruin seize thee, ruthless Coe!
Confusion on thy fizzing wait!
Had'st thou the only comb below,
Thou never more should touch my pate.
Club nor grease, nor twisted tail,
Nor e'en thy chattering, barber, should avail,
To save thy horse-whipped back from daily fears,
From Cantab's curse, from Cantab's tears."

He was a frequent visiter at Mr. Tooke's villa at Wimbleton. One day while walking in the garden with the party assembled there, and chattering in his usual agreeable strain, he astonished them by exhibiting his agility in suddenly springing over the *ha, ha* to talk to Mr. Pitt and some of the ministers, who were walking in the adjoining grounds of Mr. Dundas. Mr. Espinasse was once conversing in court with Mr. Erskine, and Mr. Lamb, of Gray's Inn, when Erskine remarked how much habit and the practice of speaking gave a man confidence in addressing the court. "I protest I don't find it so," said Mr. Lamb, "for though I've been a good many years at the bar, and have had my share of business, I don't find my confidence increase; indeed, the contrary is rather my case." "Why," replied Erskine, "it's nothing wonderful that a *Lamb should grow sheepish.*" One night Erskine was coming out of the house of commons, when he was stopped by a member going in,

who accosted him, "Who's up, Erskine?" "Windham," was the reply. "What's he on?" "His legs," answered the witty advocate. Erskine was commander of the volunteer corps, called "The Law Association." Some one wishing to quiz him, told him that his corps were much inferior to the Excise Volunteers, then notoriously the worst in London. "So they ought to be," good humoredly observed Erskine, "seeing that the excise people are all Cæsars" (seizers.)

Boswell mentions meeting him in his youth at Sir Archibald Macdonald's. He describes him as "a young officer in the regimentals of the Scots Royals, who talked with a vivacity, fluency, and precision, so uncommon, that he attracted particular attention." In the course of the conversation, Erskine boasted that when at Minorca he had not only read prayers, but preached two sermons to the regiment. This was, indeed, always a favorite boast of his. To have been a sailor, a soldier, a parson, and a lawyer, was the greatest source of his pride.

He had a most singular propensity for witnessing fires, and has been known to leave the house of commons in the midst of a debate, on hearing that a conflagration was to be seen within a mile. Sheridan said that a chimney could not smoke in the Borough, without Erskine's knowledge.

Lord Erskine had a great regard for money. He acquired a large fortune which he invested in trans-atlantic securities, anticipating the possibility of convulsions at home. Considering this was done at the time of the French revolutionary war, it speaks little in favor of his patriotism; and the event proved that he was deficient in foresight. He was, however, of

a generous and liberal disposition, as the following anecdote will show. During the time he was chancellor, he invited the gentleman, by whom the anecdote is related, to breakfast with him. While they were conversing, a servant brought in a letter which Lord Erskine read with considerable emotion. After a pause, he said it was from one of the French princes, without naming which, and added that it was to solicit his assistance on the occasion of some embarrassment. He then remarked on the very extraordinary change which a few years had brought about in their respective fortunes. "The first time I saw the writer of this letter," he continued, "was at Versailles. I was then a poor ensign on my way to join my regiment, which was lying in Minorca. As I was travelling to Paris in a public vehicle, one of the passengers, who had some inferior situation in the palace, offered to procure an opportunity of seeing the court, and there I beheld this prince figuring as one of the most distinguished men in Europe. I was then in the lowest rank of one profession, and am now at the head of another of a totally different nature, and he, in exile and in poverty, is supplicating my aid."

His latter years were not marked with any thing which deserves commemoration. It is understood that they were clouded by misfortunes, aggravated by pecuniary difficulties. He applied himself to farming pursuits, but succeeded in this branch little better than he did as a chancellor. One day George Colman and Jack Bannister were dining with him. After dinner he told them with some pride, that he had three thousand head of sheep. "I see your lordship," exclaimed Colman, "has still an eye to the woolsack!" The present earl of Leicester has told a story of Er-

skine's accompanying him in a ride through one of his farms. Coming to a finely cultivated field of wheat, Erskine exclaimed in a delighted tone, "What a beautiful *piece of lavender!*" It is possible, however, that it was the first specimen he had seen of the system of drill husbandry, which was then but newly introduced. It was at Holkham that Sir John Sinclair met this eminent, amiable, though unfortunate man. Sir John, a tolerably competent judge in such matters, says that Erskine knew nothing of agriculture: once he said to him, "I have formerly studied Coke at Westminster, and I am now studying Coke at Holkham; and Coke the agriculturist is as great in his way as Coke the lawyer in legal matters." It is to be feared that Erskine did not learn much from either Coke.

Lord Rosslyn was in the habit of ridiculing the egotism which deformed Erskine's character, in a vein of good-humored pleasantry. He used to say, in jest, that Erskine once addressed a public meeting in the following words, or to the like effect: "As to me, gentlemen, I trust I have some title to give my opinion freely. Would you know whence my title is derived? I challenge any man among you to inquire! If he ask my birth—its genealogy may rank with kings! If for my wealth—it is all for which I have time to hold out my hand! If my talents—no! of these, gentlemen, I leave you to judge for yourselves!"*

* Dr. Parr and Erskine were fond of bandying compliments amongst each other. Parr once told the latter that, if he survived him, he would write his epitaph. "You are wrong to say that, doctor," replied Erskine, "for you hold out to me an inducement *to commit suicide!*"

The late Mr. Park, who used to meet him in early life, mentions his habit of speaking "in private society with great rashness, and appearance of superficialness, on subjects connected with his profession." And he adds, "to some observation of mine, questioning the legality of a local custom of which we were talking, he repeated twice over, in that high pitch which those who were acquainted with him will recollect he used, when excited or angry, 'There is no other law in England than custom.' I was then only a student, but that, certainly, was a very rash observation for a man who sat on the woolsack to make to any one." But with all his faults and follies, Lord Erskine's name will not readily be forgotten. He rendered essential services to his country; and, if an eccentricity both of mind and manner detracted something from his usefulness, we must not forget that his errors were of the head and not of the heart. We may with Sheridan alter Dryden's lines—

"When men like *Erskine* go astray,
The stars are more in fault than they."

JOHN, EARL OF ELDON, presided over the court of chancery for nearly twenty-five years, from 1801 to 1827, excepting only the fourteen months of Lord Erskine's rule. Were we to say that Lord Eldon was an accomplished lawyer—that in the record of his judgments will be found the principles of equity law stated and illustrated—to declare that his learning was not only extensive but accurate—that his integrity and uprightness were never questioned—that he bore his ermines without blemish—and that his faults were only those of a great and good man—

in short, were we to characterise him as he truly deserves to be characterised, there are some, perhaps, who would think that, neglectful of our duty, we had assumed the office of the panegyrist, and were rather painting a picture than limning a portrait; yet should we be detailing nothing but sober and admitted truth.

The principal charge which has been brought against Lord Eldon is his delay. From this charge Sir Charles Wetherell defended him. "He preferred dull truth to brilliant error—slow accuracy to expeditious ignorance. Some honorable gentlemen were not particular, though £20,000 a year should be given to the wrong party. A judge, who had formerly been condemned by some person for not running quickly through the criminal calendar, had answered the impatient railer, by observing, that he so judged in the day, as to be able to sleep on going to bed at night. So thought and acted Lord Eldon." Lord Erskine, speaking in the house of lords, said, in reference to the chancellor, "My noble and learned friend, with great goodnature and pleasantry, frequently alludes to his supposed propensity for doubting, and I can account for that propensity more distinctly than it would be decent for him, in speaking of himself. No man, I believe, who has sat in the court where he presides, ever brought to the public service a more consummate knowledge of all its principles and practice. Nobody could be better qualified to decide in that forum with rapidity, yet how often does he there pause and re-pause, consider and re-consider—and why? From the justest and most amiable of motives. He even runs the risk of sometimes appearing dilatory and undecided, rather than mistake the rights of the

meanest individual in the most inconsiderable concerns, whose interests are in his hands. Sir Samuel Romilly has said, "If Lord Eldon has a fault, it is an over-anxiety to do justice." But still this over-anxiety to do justice, sometimes in effect wrought injustice. The case of Hare *v.* Horwood has been adverted to, in a Life of Lord Eldon, lately published in a periodical work. It appeared from the affidavit of the plaintiff's solicitor, that the cause had been commenced twenty years before, and that the solicitor's charges for attendance amounted to upwards of £1400. Sickened at the delay, which was positively ruinous to his client, Mr. Lowe, the solicitor, wrote to the chancellor, stating that the cause had been for seven years awaiting his lordship's judgment—that upwards of twenty-two years previously it had reached the top of the paper, where he requested it might remain until he could decide it—adding that he felt it a painful duty to apprize his lordship, that *the infant for whose benefit the suit was instituted, had died of a broken heart on account of being kept out of his property.*

This was a bold scheme, but it succeeded. Instead of being denounced in open court for his audacity, in venturing privately to solicit a judge, Mr. Howe was sent for to the chancellor's private room,—the result of the interview, may be learnt from an item in the bill of costs--"to attendance on his lordship in his private room—*when his lordship begged for further indulgence till to-morrow!*" The decision was given as promised. The death of the infant, broken-hearted, which it would appear conduced to the production of this result, was merely a *ruse de guerre* of the solicitor. Another case cited,

is that of Erskine *v.* Gartshore. In November, 1816, Lord Eldon promised he would give judgment in a few days. The parties dying, the solicitor of the representatives, three years afterwards (1820), addressed a note to the chancellor, earnestly intreating him to deliver judgment. What did Lord Eldon do? Commit the solicitor to the Fleet? or reprimand him with severity? Nothing of the kind. He addressed him a letter, stating that the papers had been taken from him—that he had supposed the matter had been arranged, but that he would, as soon as he recovered the papers, dispose of the case —and concluded with, "yours, with much respect, Eldon." In 1828, however, no judgment had been given. In Collins *v.* Folt, the question was, whether a surety, paying off a bond and not taking an assignment, could claim as a speciality or a simple contract creditor. The master held him a speciality creditor, and in 1817, the case was argued before Lord Eldon. In 1824, his decision was requested, but he had forgotten the matter entirely. The case was then *re-argued*, thus doubling the expenses of the parties; and still, in 1825, judgment had not been given.

Once, after the arguments at the bar were concluded, Lord Eldon spoke for nearly two hours, and was listened to with the greatest admiration by all present. He concluded with saying, that he would take the papers home, read them through with care, and give judgment on another day. After he had done, Romilly rose from his seat and turning round, said to the counsel behind him—"Now, is not this extraordinary? I never heard a more satisfactory judgment; and yet the chancellor cannot make up his mind. It is wonderful; and the more

so, because, however long he takes to consider a case, I scarcely ever knew him to differ from his first impression." His habit of "taking papers home," has been frequently censured, as tending greatly to protract the settlement of business. But if it had—and indeed it had, without question—such a tendency, it enabled him often to prevent the unconscious perpetration of much injustice. After taking home papers, he has entered the court, next morning, and pointed out material facts, which had escaped the counsel on both sides, but which his industry had enabled him to detect. "I know," he said, on one occasion, "it has been a principle on which many who have presided in this court have acted, that a judge is obliged to know nothing more than the counsel think proper to communicate to him, relative to the case. But, for myself, I have thought and acted otherwise: and I know, yes, I could swear, upon my oath, that if I had given judgment on such information and statements only, as I have received from counsel on both sides, I should have disposed of numerous estates to persons who had no more title to them than I have; and believe me," he added, "that I feel a comfort in that thought—a comfort of which all the observations on my conduct can never rob me."

Lord Eldon's patience and industry were unequalled. On the Berkeley peerage case, he sat for thirty-four days—on the Roxborough peerage case, thirty-six days—and in the case of Thomas Nias, a bankrupt, he sat for the greater part of two days, with the utmost patience, while the bankrupt, who appeared in person, which of course protracted and complicated the proceeding, went into the most minute details.

The chancellor's attention excited the admiration of all present.

He possessed in a high degree—and he acknowledged the fact himself—"the infirmity of doubting:" he saw a thousand subtle distinctions between cases, which seemed wholly alike to common eyes. His judgment was swayed in a great measure, by the opinion he had formed of counsel. If Sir Samuel Romilly broached any position, which the chancellor felt to be unsound, yet he could not decide against him, until time had worn away the force of his argument.

Lord Eldon belonged to the old school of rigid morality. When a publisher gave to the world Mr. Southey's juvenile poem, "Wat Tyler," the chancellor refused an injunction to the laureate, on the ground of the immorality of the work*—a principle which he pursued in the cases of "Peter Pindar" (1802), on Lord Byron's "Cain" (1817), and Mr. Lawrence's "Lectures on Physiology." His high-toned morality may be detected in the judgments he delivered in the cases of Percy B. Shelley, the poet, and Mr. Long Wellesley.

* George III gave the chancellor a seal on which was engraved Justice, with eyes unbandaged, directed in her path by Religion. The king, on presenting the seal to the chancellor, told him "that justice was generally painted blind, but he did not see why she should be so, if her path was guided by religion." It has, however, been doubted whether of this principle of religion, acting as the guide to justice, an improper and injudicious use was not made by Lord Eldon, in refusing the protection of the law in the above-mentioned case. Indeed it has been questioned, and on very good grounds, whether his decision was actually law.

In his disposition of patronage, Lord Eldon has been considered to have been not altogether free from reproach. In defending the chancellor, on one occasion, in the house of commons, from some attack which had been made on him, Sir Robert Peel, observed, "that e'en his failings leaned to virtue's side." An honorable member present whispered to his neighbor, that his lordship's failings resembled the leaning tower of Pisa, which in spite of its long inclination, had never yet *gone over!* A certain judge was appointed by him, (so runs the story,) more in consequence of convivial qualities, than from any legal qualities he possessed.

His lordship used himself to mention that one morning while dressing, he was told a gentleman waited in the drawing-room to see him. He directed the servant to send the stranger to his dressing-room. On his entering, Lord Eldon found that it was the Prince Regent, who wished to see him. His royal highness then declared that he would not leave the room, until he had promised to make a certain individual a master in chancery. To such a solicitation, the chancellor was not uncourtly enough to give a refusal.*

Master Cross, who had been a captain in the militia, obtained his office simply because he had rendered the chancellor some accidental service in the street. Lord and Lady Eldon were proceeding through a

* A similar story is told of Sir W. Grant's appointment to the exchequer court. Lord Loughborough had fixed on a successor to Sir F. Buller. He was surprised in going into his private room, after sitting in Lincoln's Inn hall, to find the Prince of Wales waiting for him, who insisted he should appoint his attorney-general, Sir W. Grant, to the vacant post. Lord Loughborough reluctantly gave the desired promise.

dirty street in their carriage, when it unfortunately broke down, and but for the gallant exertions of Captain Cross, the chancellor and his lady would have been deposited in the kennel. Lord Eldon certainly repaid the assistance thus offered him in the most liberal manner.

The candidates for his livings, who had the fairest chances of success, except, indeed, such as had fathers, brothers, cousins, or patrons zealous members of the ministerial majority in either house of parliament, were snch "sporting parsons" as had had the good fortune to have accompanied the keeper of the king's conscience in his shooting expeditions, and the good sense to have given him the credit of the greater number of the birds bagged. "My list is full," was his usual reply to such, as, upon the strength of mere scholarship or piety, ventured to implore the benefits of his patronage.

His manner to the bar was bland and agreeable. "I admit, freely and cordially," said his great antagonist, who has since sat on the woolsack, "that of all the judges before whom I have practised—and I have practised much—he is out of all comparison, and beyond all doubt, by much the most agreeable to the practitioners, by the amenity of his manners, and the intuitive quickness of his mind. A more kindly disposed judge to all the professional men who practise in his court, never, perhaps, existed." His wit and good humor made him popular amongst the bar. When a young counsel moved for an injunction against digging up pasture-land, and sowing it with wheat, or any *other pernicious crop*, Lord Eldon replied, "you may take your injunction, but, in the north, we are not in the habit of calling

wheat a *pernicious crop.*" "Your lordship," once said Sir C. Wetherell, "cannot be supposed to be a great strategist; it is no disparagement to say that you have not the army list by heart." "No, Sir Charles," replied the chancellor, smiling, "I know nothing of military matters—all my acquaintance is with the Lincoln's-inn volunteers." Sir James Graham, the solicitor, was at one time engaged in a great many private and other bills, and was frequently entrusted with the office of carrying them up from the lower to the upper house. One evening Sir James came up to the bar no less than twelve times, with twelve separate bills. Twelve times was the chancellor compelled to come down to the bar, purse in hand, to receive the bills. On the twelfth time Lord Eldon said to the solicitor, "What, have you got another? When I used to know you first, you used to be called *Jem* Graham, but now we'll call you *Bill* Graham!" He would suffer, however, no undue familiarity. On one occasion he delivered judgment in a cause which had been on the paper so long, that its history had been wholly forgotten. When he had concluded, Mr. Heald said, "I know I was in this case, but whether judgment is for me or against me, I have not at this distance of time the most distant conception." "I have a glimmering notion that it is for me," said Mr. Horne. Lord Eldon checked the conversation, by desiring, in a grave tone, that counsel would not make him the subject of their observations. It is said that Lord Eldon behaved towards solicitors in his private room, almost as though they were his equals. "You never gave me a brief," he said once to one of them. "How was that?" "Yes but I did," replied the solicitor, not very courteously. "Nay, nay,

but I am satisfied of the contrary, and *I must* be the best judge on such a point." He then proceeded to express a conviction hostile to the solicitor's case, who rudely exclaimed, "Your lordship is decidedly wrong. I'll have your decision reversed in the lords." "Perhaps, Mr. L——," said the chancellor, rising, "you had better take this chair and pronounce judgment there." Both George III, and his son and successor, were extremely attached to Lord Eldon. When Prince Regent, the latter once desired "Old Bags," as he was fond of calling his faithful chancellor, to be sent for. A short time afterwards, the late Mr. Bankes, the member for Dorsetshire, entered the room with a look of peculiar complacency, but was shocked at discovering, by the prince's manner, that his appearance had not been expected. He then stated that he had come in consequence of a command, to that effect, sent him from his royal highness. "Oh! I see," said the prince laughing, "they have confounded the name. It was not *Old Bankes* I had sent for." "The fine old English gentleman" had informed every one he met on his way to the palace, that "the regent had sent for him," and this, no doubt, aggravated his embarrassment when he had discovered the mistake.

The old king would not listen to his favorite chancellor, when he wished, on account of frequent headaches, to dispense with the full-bottomed wig proper to the chancellor. Lord Eldon urged that the wig was a modern fashion, and was only part of the full dress of the court of Charles II. "That is very true," said the king, "but before that time judges wore long beards. I will consent to your giving up the wig, if you will wear the beard instead!*

* An accurate and well-informed friend informs us, on the

The same good old king, when hunting near Windsor, came in at the death of a stag which had not afforded much sport, while another out of the same herd had given a good run a few days before. "Ah!" said the king, "there are not often two Scotts in the same family."*

authority of Dr. Ryder, a brother-in-law of Lord Eldon's, that it was Lady Eldon that objected to the wig. He tells us that George Colman once looking at the chancellor arrayed in his full "law costume," exclaimed, "How the wig becomes the chancellor! His head seems made to wear that wig!" Fuseli seeing a portrait of Eldon in Sir T. Lawrence's painting room, which he had painted for Mr. (now Sir Robert) Peel, asked Sir Thomas "who it was?" Sir Thomas told him "it was the chancellor." "Den by G—," exclaimed Fuseli, in his strong German accent, shrugging up his shoulders, "I shall get out of his glotches (clutches)—give me a bit of chalk." It was given to him. He wrote upon the portrait—

"Olim quod Vulpes cauta Leoni respondet
Referam; quia me Vestigia terrent,
Omnia te adversum spectantia, nulla retrorsum."

When Lawrence showed the labelled and libelled physiognomy to Lord Eldon, he laughed heartily.

* When Lord Eldon was chief justice of the common pleas, he was once travelling the western circuit at the time that George III was at Weymouth. The king sent to him at Dorchester, and desired him to come over to see a celebrated actor at that time at Weymouth. The judge came over, and, after accompanying the royal party to the theatre, joined them in a boating excursion. They landed at some part of the coast to see a ruin, and while they were wandering about, the boat's crew invaded a neighboring orchard, and helped themselves liberally to the apples. The owner and tbe royal party returned at the same time, and Lord Eldon was loudly threatened by the farmer with being taken up along with his party, and carried before the

Of Lord Eldon's political career more is known by the public than of his legal character. Lord Eldon was a tory—he was born before reform came in fashion, and aptitude for change was held at once the title and the passport to political power. With him loyalty was a principle—firm, unchanging, undissembled. It was more than a principle, it was a passion; the sentiments of his heart concurring with the judgment of his head.

Lord Eldon was exceedingly liked in society for his unassuming and agreeable deportment. A friend has communicated to us the following anecdote in reference to this trait of his character. We believe that it has not been published before:—

"He appeared one day at the drawing-room with the seals of office newly gilt, and making a very gay appearance. In each corner of the bag was the head of a cherub. A gentleman observing to him, how prettily the corner studdings became it, the kind-hearted nobleman observed, in his good humored manner, 'I should like them better if they were four pretty ladies' heads.'"

Nothing, in short, could exceed the liveliness and amenity of his manners. A short time before his death he stopped for the night at a country inn, where he accidentally learnt that two young barristers were then staying. Although they were personally unknown to him, he sent them his compliments and an invitation to dinner. The invitation was joyfully accepted, and the guests expressed themselves afterwards

judges next day for felony! The anniversary of Lord Eldon's natal day was the same as that of his affectionate master. "Do not congratulate me," the king would say to his chancellor, "till I have paid my respects to you on this happy day."

delighted, beyond measure, with the evening they passed with the sexagenarian ex-chancellor. He related to them many anecdotes of his "early struggles," and characteristic traits of the many eminent professional men, with whom, through life he had associated, pushed round the bottle merrily, and left them charmed with his grace, his genius, and his suavity.

CHAPTER VII.

SKETCHES OF FORMER JUDGES.

Sir Edward Coke—Sir Mathew Hale—Sir John Holt—Sir Michael Foster—Lord Mansfield—Lord Kenyon—Sir John Wilmot—Sir Francis Buller—Lord Ellenborough—Sir James Mansfield—Lord Tenterden.

THE great SIR EDWARD COKE,* whose writings are text books of the lawyer, after filling, for seven years, the office of chief justice of the common pleas, was in 1606, raised to the chief justiceship of the King's Bench. Attached to the law, whose very spirit is freedom, Coke was, during the course of his judicial career, brought frequently into collision with his master, James I, whose selfish love of prerogative, induced him to transgress, as well the dictates of prudence as the principles of the constitution. Not long after he had been placed on the bench of the Common Pleas, Coke was summoned before the privy counsel, to deliver his opinion as to whether certain royal proclamations had the efficacy of acts of parliament. He evaded a direct answer to the question, urging its importance, and the short notice that

* For information respecting Sir Edward Coke, the reader is referred to a life of that great man, by C. W. Johnson, Esq. 2 vols. 1836. A well-written memoir of Coke, from the pen of E. P. Burke, Esq. late of the judges of St. Lucia, was published in the Library of Useful Knowledge, a few years ago.

had been given him, and praying leave to confer with his brethren on the matter. In reply to some observations of the chancellor, he observed, that "the king could not change any part of the common law, nor create any offence by his proclamation, which was not an offence before, without parliament." The matter was ultimately referred to certain judges, whose answer does not appear to have gratified the court. He also strenuously opposed the high commission court. In the great case of commendams, the judges were again involved in a dispute with the court. A serjeant pleading in the Common Pleas, made use of language, which James, when it was reported to him considered adverse to his prerogative. The attorney-general, Bacon, accordingly conveyed to the judges the king's command, that they should not suffer the cause to proceed until they had, in the first instance, consulted with him. But, after conferring together, they determined to disregard the royal mandate, and proceeded to determine the cause, justifying themselves to the king in the letter, in which they stated that, as the cause involved a private matter, they were bound by their oaths to decide it, "faithfully and uprightly." On this, they were summoned before the king, who in the true spirit of a pedantic pedagogue, schooled them, first for their disobedience to his commands, and secondly, for the manner of their letter, which he said was "couched indecently, and failed in the form." For this offence, they knelt down and implored pardon, but, as to the rectitude of their conduct, in resisting his orders, Coke vindicated himself and his brethren. Lord Ellesmere the chancellor, with characteristic prudence, declined to give any opinion on the matter, and referred it to the king's

counsel, one of whom—alas! that it should have been Bacon!—boldly declared the judges had in a greater degree, violated their oaths in disobeying the king's command, than they could have done in complying: because, by their oaths, they were bound to give the king counsel, and how could they have counselled him after the cause was decided. Coke replied, with some asperity, that Bacon's interference was indecent; it was the duty of counsel to plead before, and not against, the judges—to which, Bacon retorted that the king's counsel were bound to plead, not only against the greatest subjects, but the greatest body of subjects—were they courts, judges, or even the commons assembled in parliament; and then concluded with appealing to the king, with whom Coke declined contesting the matter. The chancellor having decided against the judges, the following question was then put to them—"In a case where the king believed his prerogative or interest concerned, and requires the judges to attend him, for their advice, whether, in such a case, they ought not to stay proceedings till his Majesty had consulted them?" To this interrogatory, they replied in the affirmative, with the exception of Coke, who declared that "when the case happened, he would do that which should be fit for a judge to do." Not long after this, certain charges were brought against him, chiefly in relation to his reports, which were said to contain some passages reflecting on the royal prerogative. As he succeeded in vindicating himself on this point, he only aggravated the offence, and was ultimately dismissed from his office. When the new chief justice sent to him to purchase his collar, Coke refused to part with it, saying, that "he would leave it to his posterity, that they

might one day know they had a chief justice to their ancestor."*

Of his learning as a lawyer, of his greatness as a judge, it is hardly necessary for us to speak at any length. His merits in these respects are recognised—but he had merits of another and prouder kind—he was a patriot, zealously attached to the law, satisfied that it afforded the best guarantee to the liberties of the subject, and the rights of the crown. "His advancement," it has been well observed by Hammond and L'Estrange, "he lost in the same way he got it—by his tongue." Long lived he in that retirement to which court indignation had remitted him; yet was not his recess inglorious; for at improving a disgrace to the best advantage he was so excellent, as king James had said of him, "he was like a cat, throw him which way you will, he will light upon his feet?"

Of Coke's habits, a passage in his grandson Roger Coke's "Detection," will throw some light. When Winwood had apprised James of the Earl of Somerset's share in the murder of Sir Thomas Overbury, the king sent a messenger to Coke to apprehend the earl. "Sir E. Coke then lay at the Temple, and measured out his time at regular hours, two whereof were to go to bed at nine o'clock, and rise again at three. At this time Sir Edward's son, and some others, were in Sir Edward's lodgings, but not in bed, when the messenger, about one in the morning, knocked at the door, where the son saw and knew him; says he 'I come from the king, and must immediately speak with

* It was said at the time that four P's had overthrown Coke—pride, prohibitions, præmunire, prerogative.

your father.' 'If you come from ten kings,' he answered, 'you shall not; for I know my father's disposition to be such, that if he be disturbed in his sleep, he will not be fit for any business; but if you will do as we do, you shall be welcome, and about two hours hence my father will rise, and you may then do as you please,' to which he assented." Coke used to boast that he never gave his body to physic,* his heart to cruelty, nor his hand to corruption. "The jewel of his mind," says Lloyd, "was put into a fair case, a beautiful body, with comely countenance; a countenance which he did wipe and keep clean; delighting in good clothes well worn, being wont to say, that the outward neatness of our bodies might be a monitor of purity to our souls."

From the same old writer we learn that Coke held that there were five classes of persons "pre-designed to beggary," monopolisers, concealers, promoters of law-suits, alchymists, and rhyming poets. There were three things also for which he was wont to commend himself—his obtaining so fair a fortune with his first wife—his successful study of the laws—the independent way in which he obtained his public employments, *nec precio nec pretio*, by neither prayers nor pence. The principal charges with which he has

* "Sir Edward Coke being now very infirm in body, a friend of his sent him two or three doctors to regulate his health, whom he told that he had never taken physic since he was born, and would not now begin; and that he had now upon him a disease which all the drugges of Asia, the gold of Africa, nor all the doctors of Europe, could cure—old age. He, therefore, thanked them, and his friend that sent them, and dismissed them nobly, with a reward of twenty pieces to each man." The above is an extract from a letter by Mr. Meade, written when Coke was upwards of eighty years of age.

been impeached, were those contained in a letter addressed him by Lord Bacon: "In discourse you delight to speak too much—not to hear other men—by this your affections are enlarged with a love of your own arguments. You cloy your auditory, when you would be observed. You converse with books, not men. You will jest with any man in public, without respect to the person's dignity, or your own. Your too much love of the world is too much seen, when, having the living of ten thousand pounds, you relieve few or none—the hand that hath taken so much, can it give so little?" We will not add one word in reference to these admonitions, coming, as they do, from one who prosecuted his patron to death, and soiled his hand with the wages of corruption. With his second wife Coke lived in terms of disagreement. Their marriage was effected under inauspicious circumstances—and a dispute respecting the marriage of their daughter with a brother of the favorite Buckingham, induced a separation. We find that on the celebration of this marriage, Coke dined in his chambers in the Temple by himself, while his wife presided at a splendid dinner given in honor of the "happy event." One time Coke publicly accused his wife of having purloined his plate, and substituted articles of less worth in their stead; and on another occasion she accused him of having seized her coach and coach-horses, and wearing apparel, maltreated her servants, and caused her to suffer "beyond the measure of any wife, mother, or even any ordinary woman in the kingdom." She seems, however, to have been a lady of tolerable resolution, for it appears from Howell's letters, that "she would not suffer her husband to come in at her fore-doors (Hatton House; in Holborn),

or out at her back-door." Coke was of a religious disposition. In mentioning in his note-book an accident that befel him, he did not forget to ascribe to Providence his escape with life. "The 3d of May, 1632, riding in the morning in Stockwell, at eight or nine o'clock, to take the ayre, my horse under me had a strange tumble backwards, and fell upon me (being above eighty years old), where my head lighted near to sharp stubbles, and the heavy horse upon me; and yet, by the providence of Almighty God, though I I was in the greatest danger, yet I had not the least hurt, nay, no hurt at all. For Almighty God saith by his prophet David, 'the angel of the Lord tarrieth round about them that fear him,' et Nomen Domini Benedictum, for it was his work." "He constantly," says Lloyd, "had prayers said in his own house, and charitably relieved the poor with his constant alms"—a declaration sufficient to disprove the charge of avarice which scandal has breathed against him. His last words were, according to the inscription on his monument, "Thy kingdome come, thye will be done." Can we close our notice in better words than those which follow in his epitaph—

"Learne, reader, to live so, that thou mayst so die."

Sir Mathew Hale, whose career as an advocate we have already traced, was the first judge appointed under the protectorate. That extraordinary man—Oliver Cromwell—whose transcendent genius almost redeems his crimes, selected Hale, although he knew his attachment to monarchy, acting upon his principle of "seeking men for places, and not places for men." When the dignity of the bench was first proffered to

Hale, he refused it; and on being pressed for his reason, stated that he was not satisfied with the lawfulness of Cromwell's authority. The protector then replied "that he had possession of the government, and would keep it, but still that it was his desire to rule according to the laws of the land, for which purpose he had nominated him, and that if he was not permitted to reign by red gowns, he would by red coats." By the advice of many eminent royalists of his own profession, especially of Sir Orlando Bridgeman and Sir Geoffrey Palmer, and also of Dr. Henchman, afterwards bishop of London, and Dr. Sheldon, afterwards archbishop of Canterbury, Hale yielded to the protector's wishes, and accepted the judgeship so flatteringly offered him. "In this appointment," says Burke, "Hale gave to the age the most brilliant example of sincere and fervent piety, exact justice and profound jurisprudence." Hale felt a strong objection to being engaged in criminal trials: in some degree he overcame his scruples; but, after his second or third circuit, he obstinately refused to have any thing to do with them. With state prosecutions he would never meddle. Not long after his accession to the bench, a trial took place before him at Lincoln, under the following circumstances:—An inhabitant of that city, of the royalist principles, was met by a soldier, in the fields, with a gun on his shoulder. The soldier went up to him, and demanded the gun, in virtue of an order of the protector that no such person should carry arms. The citizen refusing to surrender his piece, the soldier tried to wrest it from him, but in the struggle got well beaten. As soon as he recovered himself, he ran into the city and got one of his comrades to accompany him, and returned to the contumacious

civilian. The gun was again demanded—the citizen refused to give it up; and while the owner was struggling with one of the soldiers, the other ran him through with his sword. The assizes happening at the same time, the two soldiers were arraigned for murder, of which one was found guilty, and the other was convicted of manslaughter. Colonel Whalley, the commander of the garrison, insisted that the soldier had discharged his duty, in enforcing an order of the protector's; but Hale, paying no attention to his threats, not only passed sentence of death upon him, but ordered the execution to take place so speedily that no reprieve could possibly have been sent. Another time the protector being interested in a particular case, ordered a jury to be returned. Hale immediately dismissed the jury, without trying the case, declaring that no jury could be legally impannelled, which was not returned by the sheriff or his lawful officer. Cromwell enraged told him that he was not fit for a judge, to which Hale simply replied that that was very true. When Colonel Penrudduck was tried in vacation at Exeter, Hale resolutely refused to attend, alleging that his private affairs required his attention, which was a mere feint to excuse himself from being made the instrument of Cromwell's vengeance. At the restoration, Hale was created lord chief baron of the exchequer, by the advice of the chancellor, Clarendon. So great was his modesty, that he shunned the court. Clarendon, however, invited him to his house when the king was there, and presented him to his majesty, who conferred on him the honor of knighthood. Upon the death of Sir John Keeling, Hale succeeded him as chief justice of the King's Bench, an office

which he held for five years, when his health failing him, he resigned, and retired into private life.

The judicial merits of Sir M. Hale have always been esteemed very highly. Lord Ellenborough (Wain *v.* Warlters, 5 East 17), declared he was "one of the greatest judges that ever sat in Westminster Hall;" and (Hone's Trial) "venerable, as well for the sanctity of his character, as for the profundity of his learning." In similar terms has he been mentioned by Lord Kenyon, Lord Erskine, Lord Chancellor Northington, Mr. Justice Grose, Sir Samuel Shepherd, Lord Tenterden, and others. His love of method, evidenced in his "Analysis of the Civil part of our Law," on which Blackstone's Commentaries was founded, is one of the distinguishing traits of his judicial character. He would not permit counsel to wander from the point at issue; and would even supply their deficiencies when they appeared wanting. A counsel was once defending a Quaker in an action which had been brought against him for debts contracted by his wife before her marriage. He contended that the marriage not having been celebrated according to the rites of the church of England, was *no* marriage, and, consequently, that the Quaker was not liable. Hale saw at once that the consequence of this argument would be the bastardizing of the children of all Quakers. He directed, therefore, a special verdict to be returned.*

His prudence was remarkable. He would never give a judgment without having duly considered it.

* This brings to our recollection an anecdote related by Chief Justice Wilmot, at an assize dinner. He once tried an innkeeper at Warwick, for nearly poisoning some of his customers with some infamous port wine. The fellow escaped by proving that there had never been one drop of real port wine in the hogshead.

When a question was argued before him whether a smith's forge was within the acts relating to hearth-money, he observed that it was a matter of fact into which he had not inquired; and that he should be loth to deliver an opinion without much inquiry (1 Ventr. 192). So highly was his opinion respected by the other judges, that, after they had expressed their opinions unanimously in one way, they, on more than one occasion, were so much struck with the reasons he adduced on the contrary, that they retracted what they had said, and concurred in his decission. He had inscribed on his staff the motto, *festina lente*, which was strikingly characteristic of his mind. Though by nature quick, he never suffered himself to be carried away by first impulses. Whenever a week cause was brought before him, he was the first to recommend an amicable adjustment.

Although he disliked anything like rhetorical display, he was distinguished by the dignified eloquence with which he delivered his judgments. Even Roger North bears testimony to this. He says that Hale "became the cushion exceedingly well: his manner of hearing was patient, his directions pertinent, his discourses copious, and although he hesitated often, fluent. His stop for a word, by the produce, always paid for the delay; and on some occasions, he would utter sentences heroic." As a criminal judge, he followed his own precepts. "In business capital, though my nature prompt me to pity, yet to consider that there is also a pity due to the country; if in criminals it be a measuring cast, to incline to mercy and acquittal. In criminals that consist merely in words when no more harm ensues, moderation is no injustice. In criminals of blood, if the fact be evi-

dent, severity is justice." He was once pressed for a recommendation to the royal mercy, but replied that he did not think that they deserved to live, whom he had sentenced to die; and could be prevailed on to do nothing more than to forward a statement of the facts to the king, leaving the result wholly in his hands. He once removed an individual from an office for his misconduct. He was pressed by this person to sign a certificate for his restoration, or to give him another place. Hale told him that his faults were such that this could not be done. On which the other sank on his knees, and with tears, most vehemently intreated him to grant his request, declaring that a denial would prove his ruin. Finding Hale was not to be changed by this, the suppliant altered his tone, and reproached him for his cruelty and hardness of heart. Hale quite unmoved, assured him that he could well endure his reproaches, but must persist in refusing to sign any certificate. He then gave him some money to relieve him from his wants, and sent him away. As an equity lawyer, Hale was estimated highly.* When this great man was blamed for doing what the government thought was not justice, he offered to the chancellor the resignation of his place. The friend of moderation in religion and politics, could scarcely have been viewed with much affection by a government, composed of a dissolute sovereign and intriguing ministers. With that great man—great, despite his faults and fanaticism—Richard Baxter,† he was on terms of friendship, or rather

* See Lord Chancellor Northington's Observations. Burgess *v.* Wheate, 1 Rep. Cases Chan. temp. North. 254.

† Bishop Wilkins said of Baxter, that if he had lived in primitive times, he would have been one of the fathers of the church.

intimacy; to the young and despairing wife of John Bunyan, then in prison, he bore himself in open court with a gentleness and kindness that reflects the highest credit on him as a christian judge; and this in truth he was. So strict was he in the discharge of his religious duties, that for thirty-six years he never omitted attending at church. "He told me once," says Richard Baxter, "how God brought him to a fixed honor and observation of the Lord's day: that when he was young, being in the west the sickness or death of some relation at London made some matter of estate to become his concernment, which required his hastening to London from the west; and he was commanded to travel on the Lord's day: but I cannot well remember how many cross accidents befel him on his journey; one horse fell lame, another died, and much more; which struck him with such a sense of divine rebuke as he never forgot." "His habit," says Baxter, "was *so* coarse and plain, that I, who am thought guilty of a culpable neglect therein, have been bold to desire him to lay aside some things which seemed too homely. The house which I surrendered to him, and wherein he lived at Acton, was well situated, but very small, and so far below the ordinary dwellings of men of his rank, as that divers farmers thereabouts had better; but it pleased him." He told his grandchildren that he never changed the fashion of his clothes after he was thirty. He disliked seeing students in long periwigs, or attorneys with swords; any who waited on him took care to be plain in their attire. His house-keeping was according to the rest, like the state of his mind, but not like his place and honor. His great

advantage for innocency was, that he was no lover of riches or grandeur."

Although his business had been considerable, he left property of no greater value than £900: he is said to have laid out £1500 every year in the purchase of books and MSS., all of which he bequeathed to the Society of Lincoln's Inn, in whose valuable library they are now to be found. His death, like his life was peaceful. A short time before this event occurred, on being informed by the clergyman who attended him that the next Sunday would be Sacrament Sunday, but that, as it was not likely he would be well enough to attend, it should be administered to him in his own house, Hale replied, "No! my heavenly Father has prepared a feast for me, and I will go to my Father's house to receive it." Accordingly he was carried thither "and received the sacrament," says Burnet, "on his knees with great devotion; which it may be supposed was the greater, because he apprehended it was to be the last, and so took it as his viaticum and provision for his journey." He had a strange presentiment that if he did not die on the 25th of November, he should live a month longer, which actually happened. This great change brought no terror to Hale's mind.

In the year 1666, an opinion was very prevalent, amongst the people, that the end of the world was rapidly approaching. Hale was sitting in court during the summer circuit, when a storm arose so fearfully terrific, as to occasion a whisper that the dissolution of the earth was at hand. Great consternation pervaded the court: most of those present betook themselves to prayer; but Hale deported himself with so much firmness and courage, that no one could

doubt, had the expected event occurred, it would not have alarmed him.

The two principal charges that have been advanced against this great and good man were, first, that his judgment inclined rather to the *poor*, than to the *rightful*, suitor. Advanced by a prejudiced opponent (Roger North) and supported by nothing like facts, this charge ought to abate nothing of our respect for Sir Mathew Hale. The second is, that he passed sentence of death on two women convicted of witchcraft: that, in short, he was not superior to his age in discrediting the existence of powers in those days generally believed; which were recognised by laws not repealed for seventy years afterwards;* to which Lord Bacon† and Addison have added the suffrage of their opinions;‡ which have been asserted also by Dr. Johnson and Sir William Blackstone; and which his friend, Baxter, wrote a book expressly to defend.§

The name of Sir John Holt is always associated in our minds with the character of an upright judge, and accomplished lawyer. Under the cognomen Verus, Sir Richard Steele has thus described him in the "Tatler":—He "always sat in triumph over, and in contempt of vice: he never searched after it, or spared it when it came before him. At the same time, he could see through the hypocrisy and disguise of those who have no pretence to virtue themselves,

* 9 George II, c. 5. In Ireland a law against witchcraft is still in existence.

† Nat. Hist. Cent. X.

‡ Spectator, No. CXVII.

§ "The World of Spirits," lately republished, with some apposite observations, by Mr. Cornish, of Newgate-street.

but by their severity to the vicious. He was a man of profound knowledge of the laws of his country, and as just an observer of them in his own person. He considered justice as a cardinal virtue, not as a trade for maintenance. Wherever he was judge, he never forgot that was also counsel. The criminal before him was always sure he stood before his country and, in sort, a parent of it. The prisoner knew that though his spirit was broken with guilt, and incapable of language to defend itself, all would be gathered from him which could conduce to his safety, and that his judge would wrest no law to destroy him, nor conceal any that could save him." He was the son of an Oxfordshire knight, of good property, and a bencher of Gray's Inn. In his early years it appears that he was conspicuous for his idleness and dissipation. While at Oxford he seems to have abandoned himself to every species of license and immorality. It is said that during his residence at the University, Holt together with some associates as reckless as himself, were rambling over the country until their resources failed them. Upon this event they agreed to separate, and Holt pursued his journey alone. Towards evening he reached a very comfortable inn, which he immediately entered, and ordered an excellent supper, and desired that his horse should have every attention paid to it. After he had concluded his repast, he strolled into the kitchen, where he saw a daughter of the hostess standing by the fire shivering with ague. The hostess told him that her daughter had been nearly a year in this state, and that although she had spent nearly forty pounds in doctors and doctor's stuff, she could obtain no relief. Holt listened to this detail with the greatest attention, and

assured the mother that she need be under no further apprehensions, as he knew an infallible cure for her daughter's disorder. He then returned to the parlor, and hastily scribbling a Greek sentence on a slip of parchment, carried the charm to the anxious mother, and desired her to bind it round the sufferer's wrist, and he declared she would hear no more of the ague. The hostess obeyed these directions, and fortunately the ague did disappear, and Holt acquired the reputation of a miracle worker. At the end of a week he boldly called for his bill; but the grateful landlady assured him that she it was who was indebted to him, and only regretted her inability to cancel the obligation he had laid her under, in restoring her daughter to health. Forty years passed over, and the gay and thoughtless student had become chief justice of England. At the assizes for the city in which this ludicrous adventure took place, he had to try an old woman accused of witchcraft, being possessed of a charm for curing and spreading diseases amongst cattle. The chief justice at the trial desired to see this redoubted charm, and to his amazement he found it to be the identical slip of parchment and characters with which he had himself deceived the credulous landlady. He related the anecdote to the jury, and the poor old woman was immediately acquitted. When he was chief justice he once recognised in a culprit, whom he had to try, one of his quondam associates. After this worthy had been convicted, Holt visited him in prison, for the purpose of learning what had become of his early companions. "Ah, my lord," was the criminal's reply, "they are all hanged except your lordship and myself." It is not a little remarkable that Holt should in after years have displayed, not simply great talents,

but also immense learning. The possession of great talents is no ways incompatible with the pursuits of the rake and the reveller; but learning is the fruit of industry, and industry is a habit, like all other habits, rarely acquired except in youth, when our intellect, vigorous and hardy, renders us indifferent to toil and fatigue. Called to the bar in 1663, he soon obtained a considerable practice, although it would seem success did not attend his first efforts. He was counsel for the popish lords in 1680, and in 1683 he was retained by Lord Russell, to argue a technical point arising out of his trial. When Charles commenced that system of oppression and misgovernment, in consummating which his brother lost the throne, Holt joined the ranks of the opposition, and was in James's time made the victim of his attachment to the law, by being removed from the recordership of London, because he refused to acknowledge the power of dispensing with the laws claimed by the infatuated king. After bearing a distinguished part in effecting the revolution, Holt was appointed chief justice of the king's bench, by William III. It fairly ranks amongst the chief blessings of the revolution, that it purified the bench of justice, and converted what was formerly an instrument of despotic power into a safeguard for popular rights. There is nothing in our political constitution so happily framed to protect individual freedom—nothing in our social condition, presenting, as it does, such a variety of interests so harmoniously blended—comparable in value with the blessings which our system of just laws, impartially administered, has diffused through the whole community. And these blessings we owe, in great part, to the wisdom and honesty of those who have sat on the bench of

justice for a succession of years, extending from the days of Holt to those of Denman. When a mob assembled in Holborn, threatening to pull down a crimping-house, a body of the foot-guards were desired to march to disperse them. The commanding officer sent to Holt to beg him to direct some constables to accompany the soldiers, and give their proceedings the countenance of legal authority. "And pray, sir," said Holt to the officer who brought the message, "what will you do if the people refuse to disperse at your coming?" "Why, in that case, my lord," replied the officer, "we have only to fire upon them." "Have you so, sir?" rejoined Holt; "then take notice if you do, and one be killed, and you are tried before me, I will take care that you, and every soldier in your party, is hanged. Go back, sir, to those who sent you here, and tell them that no officer of mine shall accompany soldiers, and let them know that the laws of this kingdom are not to be executed by the sword; these matters belong to the civil power, and you have nothing to do with them!" Having thus dismissed the officer, he went himself to the scene of riot, accompanied by some tipstaves and constables, and succeeded in quelling the disturbance simply by his firmness and tact. In Holt's time there were some persons in London who pretended to possess the power of foretelling future events, and who were called the French prophets. Holt having upon occasion committed one of these to prison, a disciple of his came to the chief justice's house, and desired to see him. He was told by the servant that his lordship was indisposed, and could see no company that day. "But tell him," replied the deluded individual, "that I must see him, for I come from the

Lord God!" This extraordinary message being communicated to Holt, he desired the applicant to be shown in, and when he entered, inquired his business. "I come from the Lord, who bade me desire thee to grant a nolle prosequi for John Atkins, his servant, whom thou hast thrown into prison!" "Thou art a false prophet, and lying knave;" returned the chief justice. "If the Lord had sent thee, it would have been to the attorney-general, for the Lord knoweth that it is not in my power to grant a nolle prosequi."

One time the chief justice's wife being very ill, he sent for Dr. Radclife, the first physician of the day, but who entertained the greatest possible aversion to Holt. This excited general surprise, which was not diminished when it was found that Radcliffe paid her ladyship a degree of attention he did not usually accord his patients. On being asked his reason, he replied, "I know Holt wishes the woman dead, so I'm determined to keep her alive to plague him!"

He was on the bench when the important case of Ashby *v.* White was decided, in which he asserted the right of a burgess to claim damages against a returning officer who refused to record his vote. Of his conduct, on this occasion, many anecdotes have been narrated, but we believe them apocryphal.

Sir Michael Foster, one of the ablest and best of our judges, was, on the recommendation of Lord Hardwicke, made one of the puisné judges of the king's bench, in 1745. He was chiefly remarkable for his profound knowledge of crown law, and the unbending rectitude of his character. His conduct at a trial of a question of right of way through Richmond Park, illustrates the impartiality which

characteized his judgments. Of this case, the following account was given by Lord Thurlow, then at the bar, in a letter to Mr. Ewen, a nephew of the judge's.

Dear Sir,

I write, at the hazard of your thinking me impertinent, to give you the pleasure of hearing that of your uncle, which in all probability you will not hear from him: I mean the great honor and general esteem which he has gained, or rather accumulated, by his inflexible and spirited manner of trying the Richmond cause, which has been so long depending, and so differently treated by other judges. You have heard what a deficiency there was of the special jury, which was imputed to their backwardness to serve a prosecution against the princess. He has fined all the absentees £20 a piece. They made him wait two hours, and at last resorted to a *tales* When the prosecutor had gone through part of the evidence, Sir Richard Lloyd, who went down on the part of the crown, said, that it was needless for them to go on upon the right, as the crown was not prepared to try that, this being an indictment which could not possibly determine it, because the obstruction was charged to be in the parish of Wimbleton, whereas it was in truth in Mortlake, which was a distinct parish from Wimbleton. They maintained their own poor, upheld their own church, and paid tithes to their own parson; and Domesday-book mentions Mortlake. On the other side, it was said that Doomsday-book mentions it as a baron's fee, and not as a parish; and that the survey in the time of Henry VIII, mentions Wimbleton *cum capellis*

suis annexis; and also that a grant of it in the time of Edward VI, makes a provision of tithes for the vicar to officiate in the chapel of Mortlake. The judge turned to the jury, and said, he thought they were come there to try a right, which the subject claimed to a way through Richmond Park, and not to cavil about little low objections, which have no relation to that right. He said, it is proved to be in Wimbleton parish; but it would have been enough if the place in which the obstruction was charged, had been only reported to be in Wimbleton, because the defendant and jury must have been as sensible of that reputation as the prosecutors; but had it not been so, he should have thought it below the honor of the crown, after this business had been depending three assizes, to send one of their select counsel, not to try the right, but to hinge upon so small a point as this. Upon which Sir Richard Lloyd made a speech, setting forth the gracious disposition of the king in suffering this cause to be tried, which he could have suppressed with a single breath, by ordering a *nolle prosequi* to be entered. The judge said he was not of that opinion. The subject is interested in such indictments as those for continuing nuisances, and can have no remedy but this, if their rights be encroached upon; wherefore he should think it a denial of justice to stop a prosecution for a nuisance, which his whole prerogative does not extend to pardon. After which, the evidence was gone through; and the judge summed up shortly, but clearly, for the prosecutors.

It gave me, who am a stranger to him, great pleasure to hear, that we have one English judge, whom nothing can tempt or frighten, ready and able

to hold up the laws of his country as a great shield of the rights of the people. I presume that it will give you still greater to hear, that your friend and relation is that judge: and that is the only apology I have to make for troubling you with this.

I am, dear sir,

Your most humble servant,

E. THURLOW.

Figtree Court, Inner Temple,
April 11*th*, 1758.

A short time before his death, he travelled the Oxford circuit in one of the hottest summers known. When the grand jury attended him at Worcester, he addressed them with these words, instead of the expected charge: "Gentlemen, the weather is extremely hot; I am very old, and you are very well acquainted with your duty, I have no doubt but you will practise it." In his "Rosciad," Churchill thus speaks of this excellent judge:—

> "Each judge was true and steady to his trust,
> As Mansfield wise, and as old Foster *just*."

Lord Mansfield is justly esteemed one of the most eminent judges that have ever adorned the bench. Although he owed his elevation, rather to the political services he had performed for the minister in the house of commons, than to his qualifications as an accomplished lawyer, he never, to his credit be it said, displayed, as a judge, any of the partialities of a partizan. In the determination, however, of those moot questions in our law, into which political considerations unavoidably intrude, and in which; as the law has spoken in an "uncertain

tone," the judge in his decision is regulated in some measure by his notions of expediency, Lord Mansfield showed a strong leaning towards the side of prerogative, and a devotion to the house of Brunswick far more fervent than his devotion to the principles that seated that house on the throne. In respect to the law of libel, he strenuously supported the doctrine which left it to the judge, instead of the jury, to settle whether the publication was, or was not libellous. He has also been accused of esteeming very lightly the trial by jury; but Mr. Buller, than whom a more competent witness could not be found, has positively declared this assertion to be untrue, and that Lord Mansfield found no part of his duty more agreeable to him than attending the trials at Guildhall.

Of his judicial character, undoubtedly the most prominent feature was his anxiety that substantial justice should be done in every case brought before him. It has been said, and with truth, that this anxiety was not always restrained by a dne regard to the appropriate duties of a judge, as well as the characteristic functions of a court of law, as distinguished from those of a court of equity. Nor is it difficult to account for this. When at the bar, Lord Mansfield practised chiefly in the court of chancery, where he saw daily in operation a system which, looking rather to the intentions of parties than to the strict letter of the law, was founded upon principles of liberal and enlarged construction unknown to the courts of common law. These principles were enforced by courts of equity in the discharge of their peculiar duties, in meliorating the rigor and supplying the deficiencies of the law; but admirably adapted as they were for

this purpose, they were wholly foreign to the nature and design of our law courts. This consideration was overlooked by Lord Mansfield, and in overlooking it, he almost converted the court of King's Bench into a court of equity—he did even worse—he introduced a system of lax interpretation, which has added incalculably to the vagueness and bulk of English law, and has made it burthensome to the judge and costly to the suitor. "My dear Garrick," once observed Lord Mansfield to the great actor, "a judge on the bench is now and then in your whimsical situation between tragedy and comedy—inclination pulling one way, and a long string of precedents another." Shortly after he became chief justice, a learned counsel took up much of the time of the court in citing several black-letter cases, to show the true construction to be put on an old woman's will. Lord Mansfield heard him to the close of his argument, and then addressed him gravely, "Pray, sir, do you think it in anyways likely that this old woman ever heard of these cases? And if not, what construction do you think common sense points to?" He then decided for common sense. It has been said that he was not a very profound lawyer. But this assertion is hardly reconcileable with the fact that he habitually disposed of questions of a purely legal character, with readiness and evident ease to himself. He was always anxious that it should be understood that whatever he did was the effect of his genius, and not of his industry; and this, probably, often led him to conceal the depth and extent of his legal knowledge. It is certain that he never admired the subtleties and refinements of our ancient lawyers. Coke he held in the greatest aversion, chiefly, he said, because he attempted to give reasons

for every thing, and also, we may believe, because his pure and classical taste revolted against the harsh and barbarous diction of the venerable patriarch of English jurisprudence. It will be for his decisions on our commercial law, that Lord Mansfield will be chiefly remembered by posterity. Here his enlarged understanding found fitting occupation. The foundations of our law were laid in a period when commerce was almost wholly unknown. When, however, the relations of society became more complex, and commercial differences were daily brought before the courts for adjustment, duties then devolved upon the judge of an especially delicate and important character—duties which exposed him to the danger of departing from his office of interpreter, and trespassing upon the province of the legislator. These duties, needing for their efficient discharge so much weariness and caution, Lord Mansfield performed with his accustomed tact and dexterity. In detecting remote analogies—in extracting, by the aid of a refined logic, from the doctrines of our old law, general principles, and applying those principles in the determination of questions unknown to our ancestors—he displayed a reach of mind and extent of knowledge that has won him a high place amongst our lawyers. Nor was it only in great things that he was great. In despatching the common business of the courts, he shone with equal splendor. Lord Sandwich used to say of him, "that his talents were more for common use, and more at his finger's ends, than those of any person whom he had ever known." The fact that during the thirty-two years he presided in the court of King's Bench, there were but two instances of a final difference of opinion amongst the judges in that court, is

in itself a high testimony to the merits of his judicial character. It is said that after the determination of one cause, he found reason to alter his opinion respecting the direction he had given to the jury, and when he next saw the counsel, against whose client the verdict had been given, desired him to move for a new trial. Mentioning this circumstance a few days afterward at the judges' dinner, they expressed their surprise at the coolness with which he avowed his change of opinion. "Why," said he, "it is, after all, only showing the world, that you are wiser to day than you were yesterday." The less wise would have abided in his error—one more wise would not have committed it.

Nothing could be more agreeable than Lord Mansfield's elocution, although his language would not always endure critical examination. But his voice was so pleasing, and his gesture so graceful, that all his other defects were overlooked. Wilkes said, that to hear the puisnè judges deliver their judgments àfter their chief had concluded, "was like a draught of hog's-wash after a bottle of champagne." Mansfield was particularly happy in the statement of a case.—Some one observed, "That it was worth the argument of another man." He was fond of enlivening the court with sallies of good humor. A Jew was once brought before him to justify bail for fifty pounds, who made up in lace upon his coat, what he wanted in honesty in his character. The counsel put to him the usual question, "Are you worth fifty pounds after your just debts are paid?" "How can you ask such a question," exclaimed Lord Mansfield; "don't you see that he would burn for thrice

the money." This spirit of humor was natural to him.*

At the sittings of Guildhall, an action of debt was tried before him, in which the defendant, a merchant of London, complained with great warmth of the plaintiff's conduct, in having caused him to be arrested, not only in the face of day, but upon the exchange, where all the merchants of London were assembled. Lord Mansfield stopped him with the greatest composure saying, "Friend you forget yourself, *you* were the defaulter in refusing to pay a just debt; and let me give you this piece of advice, for the future do not put it in any man's power to arrest you, either in public or private."

Lord Mansfield's private character was marked by prudence. He might with perfect propriety have as-

* When he was a school-boy at Westminster, Lady Kinnoul invited him to spend one of the vacations with her. One day, going into the room where she was sitting, she found him "musing in thoughtful mood," with a pen in his hand. She asked him whether he was writing his theme, and what in plain English the theme was. "What's that to you," replied Murray, quickly. "How can you be so rude," said her ladyship: "I asked you a civil question, and did not expect so pert an answer." "Indeed, my lady," rejoined the young wit, "I can give you no other answer—what is that to you." The theme was Quid ad te pertinet.—One of the right reverend bench of bishops having built and endowed an almshouse for twenty-five old women, Murray, then at the bar, was applied to for an inscription—upon which he wrote the following:—

Under this Roof,
The Lord Bishop of Bath and Wells
Keeps
No less than Twenty-five Women.

sumed the motto of Sir Nicholas Bacon, "In mediocribus firmior." Before he was raised to the bench, it is believed he had the opportunity offered him of becoming the head of the cabinet; and afterwards, the great seal was repeatedly pressed on his acceptance. But he wisely declined dignities so precarious as these. This cautious spirit he carried into the discharge of his official duties. When he was attorney-general, it is said, that he never lost a crown cause, because he took care that the crown should never become a party to legal proceedings, when its rights were not a matter of certainty. He held extreme measures in extreme aversion. He was the first judge that openly discouraged prosecutions on the popery laws. When he was asked his opinion as to the propriety of prosecuting Wilkes, he replied, "I am decidedly against the prosecution. By a public notice of him, you increase his consequence, the very thing which he covets." His prudence upon one occasion was displayed remarkably inopportunely. When London was in the hands of an undisciplined rabble, he is known to have shrunk from the responsibility of expressing his opinion upon a question, since judicially determined, whether troops can lawfully act against the people, without the riot act's having been first read.*

He displayed, however, a proper firmness when he

* In these riots Lord Mansfield himself suffered severely. His house with a valuable library and collections was totally burnt. He was offered recompence for his losses by the treasury, but he declined it, much to his credit. When speaking in the house of lords upon some legal question, shortly after the riots, he said, "This I say not, my lords, from books, for books I have none."

was consulted by the king as to the propriety of pardoning Dr. Dodd. Adverting to two young men who had been shortly before executed for the same crime, he said emphatically, "If Dr. Dodd ought to be pardoned, the Perreaus have been murdered." Lord Mansfield, however, was no admirer of a sanguinary code. Being desirous to save the life of a man that he was once trying, who had stolen a watch, he desired the jury to value the watch at ten pence. The prosecutor immediately called out, "Ten pence—ten pence! Why, my lord, the very fashion of it cost five pounds!" "True," said his lordship, "but we must not hang a man for fashion's sake!" When Wilkes applied for a reversal of his outlawry, he took every means to terrify the judges, whose decisions he apprehended would be unfavorable to him. Obscure threats of personal violence were held out, and Westminster hall and the court of King's Bench were crowded on the day of the trial with such a rabble as seemed fully qualified to carry such threats into execution. Throughout the trying scene, Lord Mansfield behaved not only with courage, but with a dignity and impartiality worthy an English judge. When he pronounced for the reversal of the outlawry, he took care to observe, that the menaces which had been uttered to deter him from executing his duty had brought to him no terror, and that he decided for the reversal "singly upon the authority of cases adjudged."

Somebody asked him, shortly after the commencement of the disturbances in France, when the revolution would end: "I fear," said he, "it is not yet begun." On another occasion, his opinion was asked of its ultimate issue. He replied, with his habitual

caution, "It is an event without precedent, and therefore without prognostic."

Of his private character we may observe, that he in nowise fell short of his public talents.* He retained to the last his accustomed cheerfulness. One day he paid a visit to Sir Thomas Parker, the chief baron of the exchequer. The conversation turned upon their respective ages. The chief baron observed, "Your lordship and myself are not at sixes and sevens, but at sevens and eights." Lord Mansfield was in his seventy-eighth, and Sir Thomas in his eighty-seventh year. The *youthful* peer pleasantly turned the conversation by exclaiming, "Pooh! pooh! Sir Thomas, let you and me talk about the young ladies, and leave old age alone!"†

As a proof how little age impaired Lord Mansfield's powers, the following anecdote related by Lord Chief Commissioner Adam‡ is worth perusal. Speak-

* Although an extremely handsome man, Lord Mansfield was destitute of every thing like personal vanity. Sir Joshua Reynolds says, that when Lord Mansfield was sitting to him for his portrait, he asked his lordship if he thought it was a likeness. "I really cannot say, Sir Joshua," replied the chief, "for I have not seen my face in a looking-glass for thirty years. My servant always dresses me and puts on my wig, so I have no need of consulting the mirror.

† When this venerable baron resigned, Sir Sidney Stafford Smythe was appointed his successor. The new chief baron was prevented by gout from attending in court at the judge's dinner on the first day of the term after his elevation. Lord Mansfield jocosely observed, "That lord chief baron Smythe should resign in favor of his predecessor!"

‡ Mr. Adam fought a duel with Mr. Fox shortly after Byron's engagement in the West Indies, about which time there was a great clamor respecting the ammunition with which the fleet was provided. Fox, on receiving Mr. Adam's ball, and finding

ing of a trial, in which he was himself counsel, in 1784 (when Lord Mansfield was in his eightieth year), he says, "Erskine was leading counsel one side, and Pigot on the other. The question was whether a certain person was subject to the bankruptcy laws, as being a trader within the meaning of the statute. The case had lasted from nine in the morning, till past seven in the evening. When the case for the defendant had closed, Lord Mansfield stopt the reply, and addressing himself to the counsel, said, 'I think I can dictate a special verdict which will bring this long-contested case to a close. Listen to me and be sure that I am correct.' He then desired the associate to take down what he was going to state. He began with the parol evidence, stating facts which left nothing but a question of law. Wherever documentary evidence came in, in the course of the parole, he put it in its proper place with its proper date and description, adding, 'here, take it in front' (to save transcription at the time). In this way he went on to the end of the evidence—the counsel on each side were perfectly satisfied—the case was heard in the term, and the question which had been so long litigated was finally settled, and has become a leading case in what constitutes trading within the statute. This exhibition astonished all of us that heard it; it required the combination of quickness of apprehension and discrimination of facts, as raising a question of law for the court, and not one of evidence for the jury. I cannot forbear adding, that about nine o'clock at night, when the case had closed and the

that it had made but little impression, called out, "Egad, Adam, it had been all over with me if you had not charged with government powder."

jury had found their verdict, Lord Mansfield addressing himself to the counsel who had remained in court, said, 'Gentlemen, as you have lost your dinners, you had better come and dine with me.' He was in great spirits, and full of conversation—a great deal of it turned upon the conduct of counsel in *nisi prius* causes. He told us many anecdotes of persons who had practised before him, with their different manners of conducting business."

Mr. Nollekens, the eminent sculptor, used to relate the following anecdote of Lord Mansfield's benevolent temper in his latter days. He was one day standing with his lordship in his farm-yard at Caen Wood when a little girl came up to him and presented her mother's compliments to farmer Mansfield, and would be obliged to him for a jug of milk. "Who is your mother; my little dear?" inquired Lord Mansfield. "She's just come to live at that small house close by the road." His lordship with his usual smile, called to one of the helpers, and desired him to fill the child's mug, and if he found the family deserving, never to let them want milk.

We conclude our remarks upon Lord Mansfield's character with an observation that has made on him by one as illustrious as himself: "Lord Mansfield," Lord Thurlow once said, "was a surprising man: ninety-nine times out of a hundred he was right in his opinions or decisions. And when once in a hundred times he was wrong, ninety-nine men out of a hundred could not discover it. He was a wonderful man!" Such an eulogy as this is worth all the snarling criticism of Johnson and Parr; the first of whom hated him because he was not a Tory, and the second because he was not a Whig.

Lord Mansfield was succeeded in his high office by Sir Lloyd Kenyon, Master of the Rolls, who was then raised to the peerage. While Lord Mansfield was enforcing in a court of law that system which belonged only to a court of equity, Kenyon was charged with adhering, in the rolls court, too closely to the letter and spirit of our common law. Whether this be true or not, it must be esteemed a fortunate day for the law that saw Lord Kenyon seated on the bench. He avowed his determination to look to the law only as the guide of his decisions. "I have been," says he,* "in this profession more than forty years, and have practised both in courts of law and equity; and if it had fallen to my lot to form a system of jurisprudence, whether or not I should have thought it advisable to establish two different courts, with different jurisdictions, and governed by different rules, it is not necessary to say. But, influenced as I am by certain prejudices, that have become inveterate with those who comply with the systems they found established, I find that in these courts, proceeding by different rules, a certain combined system of jurisprudence has been framed most beneficial to the people of this country, and which, I hope, I may be indulged in supposing has never yet been equalled in any other country on earth. Our courts of law only consider legal rights; our courts of equity have other rules, by which they sometimes supersede mere legal rules, and in doing so they act most beneficially for the subject." After stating the mutual operation of our legal and equity systems, Lord Kenyon adds, " by these means the ends of justice are attained without

* Banerman *v.* Radenius, 7 T. R. 666.

making any of the stubborn rules of law stoop to what is called, or supposed to be, the substantial justice of each particular case, and it is easier to act thus than to leave it to the judges of the law to relax from those certain and established rules by which they are sworn to decide." In very truth to "equity," and the courts in which it is administered—albeit he had presided in one himself—Lord Kenyon bore no very great affection.* A case was brought before him when chief justice, which came within the jurisdiction of the judge on the other side of the hall.—"You must go into chancery for redress," said Kenyon, "abi in malam rem!" This anecdote was related by Lord Eldon. When this great authority, then attorney-general, had occasion to come before him, "it was amusing to see," says Dr. Dibdin, "how Lord Kenyon seized every tempting opportunity to ridicule the courts of equity, of which Mr. Scott was confessedly the prime ornament."

As to his personal character, we must observe that Kenyon brought to the bench a violent and petulant character. Whilst at the bar he was engaged in perpetual wrangles with his colleagues. Once having conducted himself with much irritation of manner, the judge said to him, "Pray, Mr. Kenyon, keep your temper." "My lord," said Mr. Cowper,† who was

* On Lord Kenyon's once observing that the parties should apply to a court of equity, Erskine pathetically asked, "Would your lordship send a dog that you loved there?"

† Of Mr. Thomas Cowper, Mr. Espinasse has recorded several amusing anecdotes. He seems to have been the Jekyll of his day. When Judge Lawrence was at the bar, he sat in court immediately behind Cowper. The latter having thrown his leg across his knee, on which there was a handsome silk stocking, Lawrence observed, "What a handsome clock you

sitting by, "you had better recommend him to part with it as soon as possible." As a judge he displayed the same irascible temperament. When the puisnè judges differed with him as to a direction he had given the jury, he exclaimed, in a tone of mortified pride, "Good God! what injustice have I hitherto been doing!"

He was once examined respecting the emoluments of his office, before a committee of the House of Commons, over which Mr. Abbot, who then held a subordinate post in the King's Bench, presided. Lord Kenyon declining to reply to some question put to him, the chairman with characteristic pomposity, informed him that he was armed with the authority of the commons house of parliament. "Sir," replied the irascible chief justice, "I have not come here to be yelped at by my own turnspit!"

To the bar his demeanor was not more courteous; to the attorney-general it was savage in the extreme. The attorneys were not exempted from the frown of this "Jupiter Hostis." After trying a question respecting some wager, he turned to the plaintiff's attorney, and sternly said, "Do not bring me actions on bets, sir, but look out for more respectable practice." In order to put down sham pleas—at that time a great source of emolument to attorneys—he would desire

have got to your stocking." "Yes," replied Cowper, "it is a *striking* clock!" In the case of a prohibition from the court of the Bishop of Salisbury, of which Dr. Calvert was the judge, it became a question whether that judge had decided on the whole of the question, or upon a collateral point only. When the opposite counsel were contending that the doctor had decided on the whole of the question, "You want," said Cowper, "to force *Calvert's Entire* down our throats."

them to attend the court, and state their reasons for giving such instructions." Mr. Espinasse mentions an instance in which his prejudice against the profession, led to the ruin of one of its worthiest members. "Mr. Lawless," he says, "was an attorney, one of my earliest friends and clients, and an honorable member of the profession. * * * * Complaint was made to the court against him for some imputed misconduct, grounded on an affidavit which the event proved was a mass of falsehood and misrepresentation; but it being on oath, and the charges serious, it was thought sufficient to entitle the party applying to a rule to shew cause why Mr. Lawless should not answer the matters of the affidavit. He would have no opportunity of answering them, till he was served with the rule, and had obtained copies of the affidavits on which it was granted. Natural justice would point out, and the practice of the court was conformable to it, that he should be heard in answer to them, before he was convicted. For that purpose a day is given by the rule, on which the party is to show cause, during which time every thing is considered as suspended. This indulgence was refused to Mr. Lawless, though the rule was obtained, on an exparte statement, before any opportunity was afforded to him to answer the charges, or to be heard in his defence. Lord Kenyon, in addition to the common form of the court's assent to the application, which is in these words, addressed to the counsel, 'Take a rule to show cause,' added, '*and let Mr. Lawless be suspended from practising until the rule is disposed of.*' He happened to be present in court when this unexampled judgment was pronounced, and heard the sentence which led to his ruin; he rose in a state of

most bitter agitation: 'My lord, I entreat you to recall that judgment—the charge is wholly unfounded—suspension will lead to my ruin—I have eighty causes now in my office.' What was Lord Kenyon's reply to this supplicatory appeal to him? 'So much the worse for your clients, who have employed such a man. You shall remain suspended until the court decides on the rule.' The rule came on to be heard at a future day, after the affidavits on the part of Mr. Lawless were filed. The charges against him were wholly without foundation, and the rule against him was accordingly discharged. Mr. Lawless was, in consequence, restored to his profession, but not to his character or peace of mind. He sunk under unmerited disgrace, and died of a broken heart." We blame and justly blame, the precipitation which subjected an innocent man to punishment; but that precipitation arose from, if we may be allowed the expression, the *intense honesty* of Lord Kenyon's character.

The scandalmonger—the gambler—the seducer—the adulterer—received no mercy at his hands: indeed, his anxiety to punish immorality, more than once hurried him beyond his province. Every sacrifice of the essential principles of justice to obtain an immediate good of whatever extent, is in truth a blot in the judicial character. But a hatred of vice was constitutional with Kenyon. Even the remotest approach to profanity shocked him. At the circuit table, one of the bar once related to him the following anecdote of Yelverton, chief baron of the exchequer in Ireland. This learned judge once went a lent circuit, and one of the assize towns happened to be a place of which one of his college contemporaries held the living: at his own request, the chief baron's reverend friend

preached the assize sermon. The time being the month of March, the weather was cold, the judge was chilled, and unhappily the sermon was long and the preacher tedious. After the discourse was over, the preacher descended from the pulpit, and approached the judge smirking and smiling—looking fully satisfied with his own exertions and expecting to receive the compliments and congratulations of his quondam chum. "Well, my lord," he asked, "and how did you like the sermon?" "Oh, most wonderfully," replied Yelverton, "it was like the peace of God—it passed all understanding; and like his mercy, I thought it would have endured for ever." When this ludicrous tale was related, Lord Kenyon muttered, but audibly, "very immoral!"

His parsimony was more remarkable even than his ignorance of scholarship. His dress, says Mr Espinasse "was the daily subject of joke or comment, whenever the lord chief justice appeared and took his seat on the bench. I happened to be in conversation with lord (then Mr.) Erskine, at Guildhall, before lord Kenyon arrived there. When he entered the court, Pope's lines in the Dunciad, on Settle the poet came across me, and I quoted them involuntarily:

> "Known by the band and suit which Settle wore—
> His only suit for twice three years before."

"The period of six years," said Erskine, laughing, during which that poet had preserved his full trimmed suit in bloom seemed to Pope to be the maximum of economy; but it bears no proportion to Kenyon's. I remember the green which he now has on at least

a dozen years ago! When I last saw the learned lord," continues Mr. Espinasse, "he had been lord chief justice for nearly fourteen years, and his coat seemed coeval with his appointment to the office. It must have been originally black; but time had mellowed it down to the appearance of a sober green, which was what Erskine meant by his allusion to its color. I have seen him sit at Guildhall, in the month of July, in a pair of black leather breeches; and the exhibition of shoes frequently soled, afforded equal proof of the attention which he paid to economy in every part of his dress." The learned judge had a trick of placing his feet in such a way as to make this economy in this respect visible to the whole court. This gave rise to a joke amongst the attorneys, who used to say, if they wanted a judge's order for leave to amend any error in the pleadings, "I shall take out a summons before Kenyon." "Because he can't refuse an amendment for the *soul* (sole) of him!" In reference to Lord Kenyon's soles, Dr. Dibdin relates the following anecdote:—Once in the case of an action, brought for the non-fulfilment of a contract, upon a large scale for shoes, the question mainly was, "whether the shoes were well and soundly made with the best materials?" A number of witnesses was called up. One of them, admitted to be a first-rate character, and of great notoriety in "the gentle craft," upon being closely questioned, returned contradictory answers; when the chief justice inquired—pointing to his own shoes—"were the shoes any thing like these?" "No, my lord," replied the witness, "they were a good deal *better* and *more genteeler!*" The court was convulsed with laughter, in which the chief justice himself heartily joined. "He held," says

Mr. Espinasse, "a pocket handkerchief to be a piece of unnecessary luxury, and therefore dispensed with the use of one: he found a sufficient substitute in his emunctory powers, which were eminently attractive."

Lord Kenyon inhabited the large house in Lincoln's Inn Fields, afterwards tenanted by lord Erskine and since by the Verulam Club. Its windows were of an unusual shape, and seemed unconscious of the glazier's hand. The desolate and forlorn appearance of the house, together with the widely-blown reputation of its owner, irresistibly recalled Pope's lines:

> "Like some lone chartreuse stood the good old hall,
> Silence without, and fasts within the wall."

About ten o'clock one night, a lady of fashion, either ignorant of the habits of the chief justice, or, which is more probable, intending to annoy him, drove up to his house for the purpose of leaving a card for Lady Kenyon. The footmen, as the custom was then, carried flambeaux, and when they thundered at the door, Lord Kenyon, who was just retiring to rest, sprang out of bed, and flinging up the window, mistook the carriage for an engine, and the "torch-bearing" menials for firemen. Without stopping to look again; he roared out with his accustomed vehemence—"Be off, you scoundrels—be off, instantly. There is no fire in this house—we don't want your engines here!" The coachman, upon this, prudently drove away. The simplicity of his habits was remarkable. A gentleman, from whom he purchased his house at Richmond, going into the neighborhood some time afterwards, went to see his old quarters.

On a table in one of the rooms he saw lying the Bible, Epictetus, and the Whole Duty of Man. "Does my lord read this?" he inquired of the old house-keeper, taking up the Bible. "No," was the reply, "he is always poring upon this little book," pointing at Epictetus. "I don't know what it is. My lady reads the two others; they come down here of a Saturday evening with a leg or shoulder of mutton; this serves them the Sunday, and they leave me the remains."

With all his defects, Lord Kenyon had a kindness of heart, and an integrity of character, that entitle him to our respect. The following anecdote pleasantly illustrates the more agreeable points of his character. An attorney's clerk once reading to him a conveyance, and coming to the word "enough," pronouced it "enow." Kenyon stopped him—"call it 'enuff'—all words which end in *ough* must be pronounced *uff*, as rough, tough, and the like." The clerk continued his reading, and when he came to the word "plough," looked up in the judge's face and called it "pluff." Kenyon, it is said, stroked his chin, and with a smile said, "Young man, I sit corrected." Dr. Dibdin, mentions, an instance of the chief justice's kindness. When a law student he used frequently to attend the court of King's Bench. "One day on retiring, the chief justice accosted him, and said, "Well, young gentleman, do you intend to be one of *us?* "I replied," says the doctor unhesitatingly but respectfully, "I should like it very much." "Try, then," was his immediate rejoinder. These words which were always uppermost in my mind, directed me in the first instance, to the choice of the bar." Mr. Marsh, the author of "The Clubs of

London," gives a pleasing instance of Lord Kenyon, in one of his milder moods. "I had been on a short visit to Richmond, and was returning to town on foot. An old coach came rumbling along and overtook me on the road to London, from Richmond. It was one of those vehicles that reminded me of a duke or marquis, under the old régime of France, retaining, in indigence and want, the faded finery of his wardrobe. Its coronet was scarcely discernible, and its gildings were mouldy; yet, it seemed tenacious of what little remained of its dignity, and unwilling to subside into a mere hackney coach. I believe I might have looked rather wistfully at it, for it was a sultry day, when I perceived a head with a red night-cap suddenly pop out from the window, and heard myself addressed by name, with an offer of a cast to London. It was Lord Kenyon, who was returning from his house at Marsh-gate, and I gladly accepted the invitation. He made the little journey quite delightful to me, by an abundance of most characteristic anecdotes of the bar, in his own time; of Jack Lee, Wallace, Bower, Mingay, Howarth, the last of whom was drowned in the Thames, on a Sunday water excursion. The good old man was evidently affected by the regrets which his name awakened, and they seemed the more poignant, because his friend was called to account in an act of profanation. 'But it was the sin of a good man,' he observed; 'and Sunday was the only day which a lawyer in full business could spare for his recreations.' Insensibly the conversation turned upon Erskine. I know not what perversity of feeling came across me, nor do I recollect precisely what I objected to that eminent man, but it was a repetition of some of the ill-tempered

animadversions of Westminster hall, that were then current. 'Young man,' said the chief justice, 'what you have mentioned is most probably unfounded; but these things, were they true, or only spots in the sun. As for his egotism, which they are so fond of laying to his charge, they would talk of themselves as much as Mr. Erskine talks of himself, if they had the same right to do so. Erskine's nonsense would set up half-a dozen of such men as run him down." Lord Kenyon had once to try a woman, for stealing in a dwelling-house, to the amount of forty shillings. At that time, such a crime was punishable with death. The case was clearly proved against her. It was her first offence, and many extenuating circumstances appeared in the course of the evidence. Lord Kenyon resolved to recommend her to mercy, but was of course compelled by the law to pass the sentence of death on her. She fainted away immediately he began: shocked beyond measure, the kind-hearted judge cried out, "good woman, good woman, I don't mean to hang you, I dont mean to hang you! —Will nobody tell her, I dont mean to hang her!"

There have been but few indeed who have had "greatness thrust upon them—" but amongst that few, was one, whose name is an ornament not only to his profession, but to his country—SIR JOHN EARDLEY WILMOT. This distinguished judge, after having received his education at Lichfield,* and Cambridge, was called

* He was contemporary with Johnson and Garrick. It is not a little remarkable, that at this school were educated five judges at one time on the bench—Lord Chief Justice Willes—Lord Chief Baron Parker—Mr. Justice Noel—Mr. Baron Lloyd —and Mr. Justice, afterwards Lord Chief Justice Wilmot.

to the bar in 1732. At the University, he contracted a passion for retirement, and often declared that the darling wish of his heart was, to become a fellow of Trinity hall, and to spend his life in that learned society. At his father's desire, he turned his attention to the law; but his success at least in London was hardly proportioned to his deserts—and although in Derby, he soon acquired a respectable practice, in Westminster hall he was not equally fortunate. His learning and integrity, however, became known to Lord Chancellor Hardwicke, who wished to appoint him first king's counsel, and afterwards king's serjeant; but Wilmot, whose mind was bent on retirement, declined the proffered honors. In 1754, he made what he called his farewell speech, in the Exchequer Court, and quitted London for his native Derbyshire, where he proposed to settle as a provincial counsel—but here the proffers of honors pursued him, and a judgeship in the king's bench was pressed, on his acceptance (1755). In the next year, upon Lord Hardwicke's resignation, Mr. Justice Wilmot was made one of the commissioners of the great seal. It was expected that he would have been appointed lord keeper, but this dignity he had resolved upon refusing. "I will not," he said in a letter to his brother, "give up the peace of my mind to any earthly consideration whatever. * * Bread and water are nectar and ambrosia, when contrasted with the supremacy of a court of justice." Not long after this he had a narrow escape of his life, while trying a case at Worcester. The following account is given by the judge himself: "Between two or three a stack of chimneys blew upon the top of that part of the hall where I was sitting, and bore the roof

down upon us; but as I sat up close to the wall, I have escaped without the least hurt. When I saw it begin to yield and open, I despaired of my own life, and the lives of all within the compass of the roof. Mr. John Lawes, (Sir Eardley's secretary,) is killed, and I am afraid some others; there are many wounded and bruised. It was the most frightful rescue I ever beheld. I was just beginning to sum up the evidence in the cause which was trying to the jury, and intending to go immediately after I had finished: most of the counsel were gone, and they who remained,* are very little hurt, though they seem to have been in the place of greatest danger.— * * Two of the jurymen who were trying the cause are killed; and they are carrying dead and wounded bodies out of the ruins still." In the King's Bench, Mr. Justice Wilmot was conspicuous as well for his urbanity, as for his ready learning, unremitting attention, and patient industry. But the toils of so laborious an office were unsuited to his love of retirement and quiet; and he endeavored though without success, to exchange his post for the chief justiceship of Chester. In 1766, when Lord Camden was made chancellor, Wilmot was offered the chief justiceship of the Common Pleas, "without terms, conditions, or stipulations of any kind." The state of his health and his indisposition to public business, determined him at first to decline this mark of royal confidence; but the warm remonstrances of his friend and colleague, Sir Joseph Yates, induced him to alter his resolution. On the evening when he was appointed,

* Amongst those who were present, were four, all of whom afterwards obtained the honors of the bench.

one of his sons, a youth of seventeen, attended him to his bedside: "Now," says he, "my son, I will tell you a secret, worth your knowing and remembering; the elevation I have met with in life, particularly this last instance of it, has not been owing to any superior merit or abilities, but to my humility, to my not having set up myself above others, and to an uniform endeavor to pass through life, void of offence towards God and man." When he accepted the office, he was assured by Lord Camden that it was "a place of perfect tranquility," but he did not find it so. He had to preside in the trial of the action brought by Mr. Wilkes against Lord Halifax, the Secretary of State, for false imprisonment. In this was raised the question of "general warrants," and Sir Eardley Wilmot delivered his opinion with firmness and discretion. In 1770, he was again offered, and he again refused, the custody of the great seal. In the same year, the offer was repeated, and with the same result. His health declining, in 1771, he resigned his seat on the Common Pleas bench; and much to his regret, the acceptance of a pension from the crown was forced on him. He had two interviews on the subject with the first lord of the treasury, who finding him inexorable, intreated the king to use his own influence with the high-minded old judge. The request of his sovereign, Wilmot could not refuse, and the pension was accordingly granted him. His retirement was as dignified as his life had been honorable. The pursuits of literature and the society of literary men adorned his retreat.

He died, February 5th, 1792, aged eighty-two years. He was never fond of his profession, though he admired law as a science, and even to the last, kept

up his law-reading. On the subject of the pursuit, for which he was originally destined, he writes, "I have not the least predilection for divinity as a profession. I saw very early the insanity and futility of ambition and avarice; but it threw me into another scheme—of wishing to do nothing beyond the bounds of a parish: whereas, we were certainly intended to exert our powers in those situations of life, for which Providence has shaped and fitted us." After he had left the Common Pleas, an estate in Derbyshire, worth £400 a-year, legally devolved on him; but there being an illegitimate son of one of the original possessors alive, Sir E. conveyed the estate to him for his life, and, if he had had children, Sir E. would have given him the whole interest in it. It is pleasing to be enabled to record that on the death of this gentleman, he left a small estate he had himself purchased, to Sir Eardley's eldest son, "and his heirs for ever."

A distinguished character of that day, once called on Sir Eardley, and related to him the particulars of a serious injury he had received from a person high in the political world. When he had told his story, he asked Wilmot if it would not be *manly* to resent the injury—"Yes, sir," was the reply of the judge, "it would be *manly* to resent it, but it would be *God-like* to forgive it." This had such an instantaneous effect on the individual to whom it was addressed, that he left the house shortly afterwards, in a more christian, and therefore more charitable, temper.

Mr. Justice Buller, one of the most learned lawyers that ever sat on our bench, was more eminent as a judge than as an advocate. It was, however, his extensive knowledge of law, displayed while at

the bar, that attracted Lord Mansfield's attention, who feeling his health and strength failing him, and anxious to have a colleague, on whose judgment he might rely, recommended his elevation to the bench, although only thirty-two years of age. He discharged his duties as a puisnè judge in such a manner as to obtain the respect and regard of the whole profession. During the last two years of Lord Mansfield's life, the chief labors of the court devolved on Buller, who was also on several occasions called on to preside in the Court of Chancery, whenever Lord Thurlow, from illness or state business, was compelled to absent himself. The indolence of Mr. Justice Ashurst, whose pupil he had been, left him without control in the rule of his court. One of the bar observing to Cowper, how Buller trespassed on the province of Ashurst, "Pooh!" exclaimed Cowper, "don't you see," pointing to the senior's rubicund face, "how he himself gives *color* to the trespass?"

Lord Mansfield was anxious that Buller should have succeeded him, but the minister would not hear of the proposal, and appointed his own friend, Sir Lloyd Kenyon, to the vacant seat. After a few years Buller retired into the court of Common Pleas. When his health had become so far impaired, as to render his withdrawal from general society a matter of prudence, he relinquished his house in Bedford Square, and retired to one he hired at Turnham Green. He was exceedingly annoyed at an ex-sheriff's-officer (who had made a little fortune in the practise of his profession) so much admiring the situation of his dwelling as to purchase a plot of ground adjoining his garden, and to build himself a house. The judge, not particularly anxious for such a neighbor, gave

up his residence, and returned again to Bedford Square.

At an assize town on the Oxford circuit, Buller was once met by a sheriff, who having been, as he said, "often fobbed off with serjeants instead of judges, in those parts, dèmanded whether his lordship was a bona fide judge?"—being assured of the fact, he entered the carriage, but, contrary to etiquette, sat himself beside the judge on the back seat. Buller let him know his mistake, but courteously concluded his rebuke, with an invitation to keep his seat. A story is told by Mr. Cradock of another sheriff, who, during a tête-a-tête with this judge on a similar occasion, by way of promoting conversation, asked his lordship if he had gone to see the elephant at the last place. "Why, no, Mr. High Sheriff," he replied, "I cannot say that I did, for a little difficulty occurred; we both came into the town in form, with the trumpet sounding before us, and there was a point of ceremony to be settled, which should visit first."

It would be unjust towards the memory of this excellent man, not to mention his kindness and consideration for the tyros of his court. Amongst others, Mr. Abbott, afterwards Lord Chief Justice Tenterden, received encouragement and assistance from him, of the most substantial kind.

Lord Ellenborough is a fair specimen of that sturdy independent character which has always been held characteristic of the English judge. Although he has been charged with an occasional departure from the courteous bearing which should equally distinguish that character, no one—and considering the

foes his severity provoked, this is no mean praise—ever imputed to him either political corruption, or unworthy subserviency to the biddings of prerogative. There is indeed one instance of a contrary feeling. Mr. Whitbread accused Lord Ellenborough, together with his brother commissioners, Lords Erskine, Spencer, and Grenville, appointed in 1805, to inquire into the truth of certain allegations against the character of the Princess of Wales, with having tampered with the evidence. Lord Ellenborough, from his place in the house of lords, denied the charge with his accustomed warmth. "My lords," he exclaimed, "I assert *the accusation is as false as hell*, in every part. * * * Such accusations are the offspring of a happy union of dullness and stupidity, aided by the most consummate impudence that was ever displayed."

He once presided on a trial of a horse cause in which a privy councillor was party. During the trial, the right honorable baronet took his seat on the bench, and ventured, in the course of the trial, to whisper an observation to the chief justice. "If you address me again, sir," exclaimed Lord Ellenborough, "I shall commit you to the custody of the marshal." On one occasion, a storm had driven a party of the Westminster volunteers to take refuge in the hall. Hearing the clatter of the musketry, Lord Ellenborough called out, "Usher, what noise is that?" "Oh, my *lud*," said the usher, "its only the volunteers *exorcising*, my *lud!*" *Exorcising!* are they; well, sir, we will see who is best at that. Tell the volunteers, if they do not depart instantly, I shall commit them to the custody of the tipstaff!"

He used to be greatly annoyed, during the season

of colds, with the noise of coughing in court. On one occasion, when the annoyances of this kind recurred with more than usual frequency, he was seen fidgeting about in his seat; and availing himself of a slight cessation, observed, in his usual emphatic manner—"Some slight interruption one *might* tolerate, but there seems to be an *industry* of coughing!"

Mr. Espinasse has mentioned an application that was once made to the court, to dispense with an immediate return to a writ of habeas corpus, under particular circumstances. Lord Ellenborough replied with a spirit worthy of one that sat in Gascoigne's seat, "Sir, I *dare* not do it." Nothing could exceed the devotion he showed to the business of his court. Lord Brougham once asserted in the house of commons, that Lord Ellenborough had to dispose of a Guildhall paper, containing 588 causes—an herculean task, but which he performed with his herculean powers. Shortly before he retired, two of the puisné judges were in the habit of sitting for him by turns; but they showed none of the facility of their chief. Vexed at the arrears he saw accumulating, Lord Ellenborough, though his health and strength were fast failing, resumed his place in court, and in one sitting, reduced the accumulation of arrears by seventeen causes.

One of the first declarations which he made after he had taken his seat as chief justice was, that as his feelings had been so often outraged by Lord Kenyon, when he filled that place, no one should ever have reason to complain that he had subjected them to similar treatment. And he kept his word. This, however, did not prevent his reproving counsel, and that severely, whenever he thought they were press-

ing objections wholly untenable, or pursuing a practice more common in his than our days, mistaking a fact, or enlarging the terms of an affidavit. "I had believed," he would exclaim in an angry tone, "that every person with a gown on his back was a gentleman. The rule is discharged." He once observed to a counsel who appeared to attach much importance to small objections, "Sir, if you cannot elevate your mind above such trumpery objections, you will never rise in your profession." Mr. Chitty relates the following anecdote, which is usually understood to apply to himself. "A leading counsel gave up a point; but the junior so pressed the argument, that he almost incurred the displeasure of the then Lord Chief Justice Ellenborough for jejune and injudicious pertinacity; but, at length, Mr. Justice Bayley induced the Chief Justice to pause and hear the argument; after which, that distinguished chief, with the candor which influences a great man, and is indispensable to the due administration of justice, publicly avowed that he had changed his opinion, and, with the other judges, decided in favor of the defendant; upon which the bar, with warmth and sincerity, congratulated the junior; and he has attributed much of his subsequent success in his profession to the result of that particular discharge of his duty." Although he had himself practised as a special pleader under the bar, he declared, when a judge, his disapprobation of the practice. "I confess," he said, "I always entertain strong prejudice against special pleaders called to the bar after long practice under it, because their habits appear to attach them too much to technical objections."* His judgments were marked with

* An anecdote has been related of a certain attorney-general

great energy of thought and diction, and sometimes enlivened with faint humor which was characteristic of the man. It is said that a Quaker once came up to be examined before him, who did not wear the broad brim and drab, which are usually held involved in the idea of a Quaker. The crier of the court, not knowing the witness's religious creed, put the book into his hand, and was about to adminster the oath; but he refused to be sworn, and required that his affirmation should be taken. The crier appealed to the chief justice, who asked the witness if he were a Quaker. The witness replied he was. "Do you mean, sir, to impose upon the court," said Lord Ellenborough, "by appearing here in the disguise of a reasonable being?" The last important incident of Lord Ellenborough's judicial life, was the part he took as presiding judge in Hone's trials for the publication of certain blasphemous parodies. At this time he was suffering from the most intense exhaustion, and his constitution was sinking under the fatigues of a long and sedulous discharge of his important duties. This did not deter him from taking his seat upon the bench upon this occasion. When he entered the court, previous to the second trial, Hone shouted out, "I am glad to see you, Lord

not particularly famous for his urbanity: after he had, at a consultation, discussed a point in his usual decisive tone, concluded with saying, "And gentlemen this is *my* opinion." A solicitor present, rather stung with the peremptoriness of his manner exclaimed, "Your opinion. I can remember, sir, when I could have had your opinion for five shillings" (alluding to the time when Mr. Attorney practised under the bar). The offending counsel immediately replied with the greatest good humor, "And probably my opinion was then not worth five shillings."

Ellenborough, I know what you are come here for; I know what you want." "I am come to do justice;" replied his lordship, "my wish is to see justice done." "Is it not rather, my lord," retorted Hone, "to send a poor devil of a bookseller to rot in a dungeon?" In the course of the proceeding, Lord Ellenborough more than once interfered. Hone, it must be acknowledged, with less vehemence than might have been expected, requested him to forbear. The next time his lordship made an observation, in answer to something the defendant urged in the course of his speech, Hone exclaimed in a voice of thunder, "I do not speak to you, my lord—*you* are not my judge—these (pointing to the jury) these are my judges, and it is to *them* that I address myself." Hone revenged himself on what he esteemed the chief juctice's partiality—he wounded him where he could not defend himself. Arguing that St. Athanasius was not the author of the creed that bears his name, he cited, by way of authority, passages from the writings of Gibbon and Warburton to establish his position. Fixing his eyes on Lord Ellenborough, he then said, "And further, your lordship's father, the late worthy Bishop of Carlisle, has taken a similar view of the same creed." Lord Ellenborough could not endure this allusion to his father's heterodoxy—it was in a broken voice he exclaimed, "For the sake of decency, forbear!" The *request* was immediately complied with. The jury acquited Hone—a result which is said to have killed the chief justice, but it is not probable this is true. That he suffered in consequence of the trial, is certain. After he entered his private room, when the trial was over, his strength had so far deserted him, that his son was obliged to

put on his hat for him. But he quickly recovered his spirits, and on his way home, in passing through Charing Cross, he pulled the cheque string, and said "It just occurs to me that they sell here the best herrings in London—buy six."* Indeed, Dr. Turner, afterwards Bishop of Calcutta, who accompanied him in his carriage, said, that, so far from his nerves being shaken by the hootings of the mob, Lord Ellenborough only observed that their saliva was worse than their bite.

As a criminal judge, Lord Ellenborough was reputed severe. Dining one day at an assize dinner, some one offered to help him to some fowl. "No, I thank you," said his lordship; "I mean to *try* that beef." If you do, my lord," said Jekyll, "it will be *hung* beef."

Lord Ellenborough was a great *bon-vivant*. Finding that his brother, the Bishop of Chester, was about giving a grand dinner party, he sent him a turtle and a cook, saying that he knew his brother too well to suppose he had any body in the palace competent to dress a turtle—he therefore had sent a proper person to perform the operation.

He would never suffer his lady to interfere in the remotest degree with the arrangements of the *cuisine*, affirming that it was impossible that women could know anything about the matter.

In returning from a continental tour, Lady Ellen-

* The celebrated Lord Granville used to relate an anecdote somewhat similar of Lord Peterborough, who "conquered Spain." One day, after the noble general had received the thanks of the house of lords for his eminent services, he drove from Westminster to a celebrated poulterer's shop, to buy a fowl for his dinner!

borough smuggled, unknown to her husband, a variety of French goods. The revenue officers received information of this, and stopped the chief justice's coach in the Dover-road. Lord Ellenborough indignantly denied that any smuggled goods were secreted in his carriage: the officers, however, insisted on searching it, and to the horror and amazement of the unconscious functionary of the law, drew forth sundry rolls of lace, packets of gloves, and frippery of various kinds, which at once justified their suspicions, and rewarded their industry.

Sir James Mansfield succeeded Lord Eldon in the chief justiceship of the Common Pleas. He was a good lawyer, and possessed many of the qualities of a good judge; but his digestion and temper becoming impaired towards the close of his career, he would sometimes conduct himself in such a manner, as proved he had forgotten the dignity which belonged to his office. If a cause should be called on a short time before the court's rising, he would petulantly inquire "whether it would last much time;" and if it extended beyond the hour of dinner, he would make his impatience audible by many a half-suppressed exclamation of annoyance. These, however, are petty matters. No one showed a more anxious desire that every matter before him should be despatched as quickly as might be, and that real justice might be done to all parties. An action for recovering the amount of an attorney's bill was once tried before him; and when a reference to several bills of costs was pressed, the attorney refused to refer, unless it was previously agreed that a charge of 3*s*. 6*d*. for a letter should be allowed. The defendant refused; on which

the chief justice said that that should not be a matter of contention, for he would pay the 3*s.* 6*d.* himself, which he instantly did; and the parties, ashamed of their pertinacity, immediately referred the cause generally.

The following absurd case once came before Sir James Mansfield. A Mr. Hussey, dining in Furnival's Inn hall with Mr. Crickets and several other gentlemen, bet Mr. Crickett a rump and a dozen, that he (Mr. Crickett) was older than himself. The bet was made in May, and nothing further was done until some of the parties meeting again in the same place, in the June of the following year, agreed that each should name a friend to appoint a day for deciding the bet and ordering the dinner. The nomination took place as agreed on, and the nominees fixed the day and ordered the dinner. When the day appointed arrived, it was found that Hussey, the plaintiff, was six years younger than the defendant, who had notice of the dinner, but did not appear—the bill was paid, and an action brought to recover the amount. "I do not," said Mansfield, "judicially know the meaning of 'a rump and a dozen.'" This difficulty was soon got over by the evidence of witnesses. Mr. Justice Chambre observed, "It is neither uncertain nor illegal: the witnesses here explained a rump and dozen to mean a good dinner and wine; and this is sufficiently certain."*

Mr. Clifford—of O P notoriety—once brought an action for false imprisonment against the box-keeper of Covent Garden theatre—by whom, during one of the riots there, he had been given into custody, and

* Hussey *v.* Crickett, 3 Campb. 173.

caused to be brought before a magistrate, who not thinking the evidence sufficient, discharged him. There being but little doubt that Clifford had caused the riot, and there being no doubt that the box-keeper had acted under a very natural suspicion, Mansfield, before whom the action was tried, summed up strongly in favor of the defendant. So confident was he of the verdict of the jury, that he took the opportunity of their absence to admonish the audience of the impropriety of the conduct which had been pursued towards the theatrical manager, and cautioned them against the consequences of a recurrence of such scenes, which had lately taken place—"scenes," he added, "which tend to disturb the public peace, and which would be now pronounced by the verdict of a just, impartial, and enlightened jury, equally unjustifiable, and subject to correction of no trifling character." Scarcely had he ended his reproof, when the jury re-appeared, and *delivered a verdict for the plaintiff, with damages!* The chief justice looked thunderstruck. He inquired of the foreman whether the jury had come to such a verdict from a belief that Mr. Clifford was not arrested until he was out of the theatre? The foreman replied—"the jury don't think it consistent with the rights of Englishmen to punish a Briton for distributing placards, or wearing a riband in his hat." Mansfield gazed for a moment on the audacious jury, shook his wig, and left the court hastily and in silence.

Sir James Mansfield was driven from the bench by the repeated attacks of Mr. Serjeant Best. Old and feeble, he had no longer any power of checking the proud spirit of his "brother,"—and, therefore, surrendered his place to him. Mr. Serjeant Pell, however, revenged the poor old judge.

Lord Tenterden was the son of a barber at Canterbury, whose house stood on the left hand side of the western entrance to the cathedral, and who has been described as "a tall, erect, primitive looking man, with a large club-pigtail behind him, and the instruments of his business under one arm, attended frequently by his son, the present chief justice—a youth as decent, grave, and primitive looking as himself." He received his education at Canterbury school. "I remember him at school," says an old school-fellow "well—grave, silent, and demure; always studious and well-behaved; reading his book instead of accompanying us to play, and recommending himself to all who saw and knew him, by his quiet and decent demeanor. I think his first rise in life was owing to a boy of the name of Thurlow, an illegitimate son of the lord chancellor, who was at school with us. Abbott and this boy were well acquainted; and when Thurlow went home for the holidays, he took young Abbott with him. Abbott thus became acquainted with Lord Thurlow, and was a kind of helping tutor to his son; and I have always heard, and am persuaded that it was by his lordship's aid that he was afterwards sent to college. The clergy of Canterbury, however, always took great notice of him, as they knew and respected his father." Lord Tenterden never displayed any false shame on the subject of his parentage;—indeed, not long before his death, being at Canterbury with his eldest son, he visited the former insignificant dwelling of his father, and pointed out to him, with evident satisfaction, the scene of his early years. It has been said also, that when on the home circuit, he accompanied Mr. Justice Richards in a visit to Canterbury Cathedral. After

attending the morning service, Mr. Justice Richards made some remark on the voice of one of the "singing men." "Ah," said Lord Tenterden, "that's the only man I ever envied. When we were at school in this town, we were candidates together for a chorister's place, and he obtained it." He went to Oxford,* where he obtained a fellowship, and for some time resided at the University as college tutor. He obtained the prize for Latin verses, in the year 1784, having failed the preceding year. Upon that occasion, the successful candidate was the Rev. W. L. Bowles, then a scholar at Trinity. Not long before Lord Tenterden's death, he met Mr. Bowles at Salisbury; and on hearing his name, immediately adverted to the literary contest, in which he had been vanquished nearly forty years before. It is not a little remarkable, that at the same period there were, at the same university, three men destined to preside in the three superior courts of this kingdom, in which the equity, the canon, and the common law is administered: John Scott, afterwards lord chancellor—William Scott, afterwards judge of the prerogative and admiralty courts—and Charles Abbott, afterwards lord chief justice of the court of King's Bench. Amongst Abbott's pupils was a son of Sir Francis Buller, through whom he became acquainted with that eminent judge.

* After he had become chief justice, he was appointed a trustee of Canterbury School. At one of the meetings which he attended, an application was made by an exhibitioner at the university, for an increase of his stipend. An inquiry was made for precedents, and only one could be found which had occurred many years before. "That student was myself," said Lord Tenterden, and immediately volunteered to pay the amount petitioned for, out of his private purse.

Buller was so much struck with Abbott's industry and talents, that he advised him to try his fortune at the bar. This he did; and, by the advice of his patron, submitted to the drudgery of attending for some months, at the office of Messrs. Sandys and Horton, the eminent solicitors in Craig's Court. Afterwards he became a pupil of Mr. Wood, a special pleader, and since, a baron of the exchequer. When at the bar, Abbott was fortunate enough to attract the notice of Lord Ellenborough, who endeavored to force him into notice. But his business, although considerable, was not of that kind which confers general notoriety. Much of his income was derived from giving opinions on cases. It was a maxim with him that, after attending long enough to be acquainted with the routine, a barrister, who had nothing to do, had much better be at home in his chambers than dawdling in court.* He received much emolument in his capacity as *treasury devil*—as the functionary is called, who acts as *flapper*, and assistant to the attorney-general. His profits at the bar have been variously stated at eight and ten thousand a year. The smaller sum is most likely the nearest approximation to the truth.

As a judge, Lord Tenterden did not display any abilities which deserve a higher character than "*respectable.*" Although he had been trained in the strictest school of special pleading, he always showed a reasonable desire to reconcile the claims of justice with the requisitions of law. In effecting this laudable purpose, he found the value of those habits of dis-

* On this point "doctors differ." Sir William Garrow gave advice of a very different kind to an eminent counsel of the present day. He seemed to think the court was the best place for a barrister who had nothing to do in his chambers.

crimination and subtle reasoning which usually distinguish men practised in the niceties of special pleading. He was thus enabled, in every case brought before him, to detect at once the true point at issue, and to discover whenever counsel were wandering into extraneous matter. This he never would tolerate: his reproofs sometimes savored more of the authority of the pedagogue, than the dignity of the judge.* But still—and this we hold his great merit—he was enabled to despatch the business of his court with a facility and quickness never before equalled, and never since surpassed. If he was at times intolerant of the peccadilloes of gentlemen of the long robe, he still showed tolerance of the stupidity and often unintentional prevarication of the stupid country clowns, whose evidence he was compelled to take down. In truth, Lord Tenterden had much good humor, but no dignity: and if he never, like some on the bench, committed himself in a *fracas* with counsel, it was because his own natural urbanity precluded such a thing: considerations of his high place would certainly never have checked him. We are sorry to state that he did not always conceal on the bench, the fact, that the prejudices that

* We have heard—that in his matters even in private life, something of the precise and formal habits of the pedagogue might be detected. One day, while entertaining the barristers of his circuit at his table, he asked a magistrate who was present, if he would take some venison. "Thank you, my lord," was the reply, "I am going to take some boiled chicken." "That, sir," testily answered the chief justice, "is no answer to my question. I ask you again, if you will take some venison, and I will trouble you to say 'yes,' or 'no,' without further prevarication!"

anciently existed against the inferior branch of the profession, while they had been banished from almost every enlightened mind, still subsisted in his. His dislike to an attorney amounted almost to aversion. Lord Tenterden was a tory at heart, and often showed a strong leaning towards those who sat in high places. The magistracy and the corporations, through which the besom of reform had not then gone, were venerated by him as institutions to be supported because "they were." But his bias in these matters, it cannot be said, in any degree interfered with the honest discharge of the duties of his office. When Hone was tried before him for blasphemy, Lord Tenterden treated him with great forbearance: but Hone, not contented with the indulgence, took to vilifying the judge. "Even in a Turkish court, I should not have met with the treatment I have done here," he exclaimed. "Certainly;" replied Lord Tenterden, "the bowstring would have been round your neck an hour ago."

"He died with his armor on." We saw him the last day he ever sat upon the bench. It was at the trial of the mayor of Bristol. He was in a state of evident suffering. But his disease was simply physical: his mind was unimpaired. He had been strongly advised, some time before, not to attend the court; but he replied, "I have public duties to perform; and while it pleases God to preserve my mental faculties, I will perform those duties—physical suffering I can and will bear?" A little more than a week before his death, he was told that if he was to continue to set the advice of his medical attendants at defiance, it was impossible he could live; but a little rest and retirement would restore him to comparative health.—

"I know better," he replied: "my days are numbered; but I will perform my duty to the last." The following occurrence is stated to have happened before his decease. He had been sinking the whole night before he died, but generally retained his faculties. Towards morning, he became restless, and slightly delirious: all at once he sat up in his bed, and with a motion of his hand, as if dipping his pen in the inkstand, as he had been accustomed to do on the bench, said distinctly, "Gentlemen of the jury, you are discharged." He then fell back in his bed, and almost immediately expired!

END OF VOL. I.

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